

<p>Page 456</p> <p>1 DONDERO - 10/29/21</p> <p>2 installment payment that was due at the end of</p> <p>3 2020; correct?</p> <p>4 MS. DEITSCH-PEREZ: Object to – are</p> <p>5 you still talking – have you left HCRE?</p> <p>6 MR. MORRIS: No. I said what I</p> <p>7 meant to. So we can take down the exhibit</p> <p>8 if that's the part that is confusing you.</p> <p>9 I appreciate that.</p> <p>10 MS. DEITSCH-PEREZ: Okay.</p> <p>11 Q. Okay. NexPoint didn't make the</p> <p>12 installment payment that was due at the end of</p> <p>13 2020; correct?</p> <p>14 MS. DEITSCH-PEREZ: Object to the</p> <p>15 form.</p> <p>16 A. Yeah. I mean, I think maybe the</p> <p>17 right way to describe it is Highland or –</p> <p>18 yeah, Highland or Frank Waterhouse on behalf of</p> <p>19 NexPoint didn't make the payment.</p> <p>20 Q. Okay. And HCRE didn't make the</p> <p>21 installment payment that was due at the end of</p> <p>22 2020; correct?</p> <p>23 A. I don't – I guess – okay, if they</p> <p>24 missed it too, I – I did not have specific</p> <p>25 awareness to that, I guess, but if you are</p>	<p>Page 457</p> <p>1 DONDERO - 10/29/21</p> <p>2 suing under it, I guess they did.</p> <p>3 Q. Right. And HCMS didn't make the</p> <p>4 payment that was due at the end of the year, to</p> <p>5 the best of your knowledge; correct?</p> <p>6 MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8 A. Yeah. I mean, what I'd just</p> <p>9 separate in my notes here is the HCMFA was just</p> <p>10 not – it wasn't a bona fide note, I guess,</p> <p>11 is – that is – which I guess is a</p> <p>12 different – a different conversation.</p> <p>13 Q. Yeah. Do you understand that the</p> <p>14 question was about HCMS? Let me restate the</p> <p>15 question.</p> <p>16 MS. DEITSCH-PEREZ: Yes.</p> <p>17 Q. HCMS –</p> <p>18 A. Oh, I'm sorry.</p> <p>19 MS. DEITSCH-PEREZ: John, I'm sorry,</p> <p>20 it is really hard on the video to</p> <p>21 distinguish between HCMF and HCMS, so if</p> <p>22 you could just –</p> <p>23 A. How about just say Services for</p> <p>24 Highland Capital Management Services, just</p> <p>25 say – instead of S, just say Services.</p>
<p>Page 458</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Sure. All right. So from now on, I</p> <p>3 will try and use the word "Services" and you</p> <p>4 will know that that means Highland Management</p> <p>5 Services, Inc.; is that fair?</p> <p>6 A. Yes, okay.</p> <p>7 Q. Okay. So Services didn't make the</p> <p>8 installment payment that was due at year-end;</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And I just want to make sure</p> <p>12 that I have this right. Is it – is it the</p> <p>13 corporate obligors' – those three corporate</p> <p>14 obligors' contention that one of the reasons</p> <p>15 they didn't make the payments at the end of the</p> <p>16 year is that they were relying on Highland to</p> <p>17 make the payment for them?</p> <p>18 A. Absolutely.</p> <p>19 Q. Okay.</p> <p>20 A. It was due course de minimis, and</p> <p>21 those entities didn't have a single employee or</p> <p>22 capable financial person other than the people</p> <p>23 at Highland that were doing the shared services</p> <p>24 for them.</p> <p>25 Q. NexPoint didn't have any employees</p>	<p>Page 459</p> <p>1 DONDERO - 10/29/21</p> <p>2 in December 2020. Is that your testimony?</p> <p>3 A. I was thinking about HCRE and</p> <p>4 Services had zero employees. NexPoint had</p> <p>5 employees but none that were involved in basic</p> <p>6 accounting functions.</p> <p>7 Q. Okay. And – and there are people,</p> <p>8 including yourself, who were officers or</p> <p>9 employees of NexPoint in December 2020;</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. And HCRE had officers in December</p> <p>13 2020, including you; correct?</p> <p>14 A. Yes. Officers, yes.</p> <p>15 Q. And Services had officers in</p> <p>16 December 2020, including you; correct?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. I think in summary form, to</p> <p>19 be fair, I think we have identified one of the</p> <p>20 defenses for these three corporate obligors.</p> <p>21 Two of them have the defense of</p> <p>22 prepayment; right?</p> <p>23 A. Yes.</p> <p>24 Q. And one of them is NexPoint,</p> <p>25 NexPoint has the defense of prepayment.</p>

<p>Page 460</p> <p>1 DONDERO - 10/29/21</p> <p>2 Do you have that -- do I have that</p> <p>3 right?</p> <p>4 A. Yes.</p> <p>5 Q. Which of the other two, remind me?</p> <p>6 A. Services.</p> <p>7 Q. Okay. So NexPoint and Services have</p> <p>8 the defense of prepayment. Are there any other</p> <p>9 reasons that you know of that these three</p> <p>10 corporate obligors didn't make the annual</p> <p>11 installment payment that was due at the end of</p> <p>12 the year?</p> <p>13 MS. DEITSCH-PEREZ: Object to the</p> <p>14 form.</p> <p>15 A. Again, they -- they should have been</p> <p>16 in regular course. Those payments -- using the</p> <p>17 word "payment" is almost like an overstatement</p> <p>18 of the significance or the amount. If the</p> <p>19 amounts were small in all cases, they should</p> <p>20 have been made or they should have been paid,</p> <p>21 even in the context of contention and even in</p> <p>22 the context of the larger amounts of money that</p> <p>23 Highland owed us.</p> <p>24 Q. I'm just -- I'm just asking a pretty</p> <p>25 simple question, sir. I don't mean to be</p>	<p>Page 461</p> <p>1 DONDERO - 10/29/21</p> <p>2 contentious with you. We have identified one</p> <p>3 defense that these corporate obligors contends</p> <p>4 exists; and that is, Highland was supposed to</p> <p>5 make the payment. Fair?</p> <p>6 A. Yes.</p> <p>7 Q. And then we have identified a second</p> <p>8 defense for NexPoint and HCMS, and that is</p> <p>9 their defense that they prepaid.</p> <p>10 Do I have that generally right?</p> <p>11 A. Yes.</p> <p>12 Q. Can you describe for me any other</p> <p>13 defenses that these three corporate obligors</p> <p>14 have for not making the payment that was due at</p> <p>15 the end of the year?</p> <p>16 MS. DEITSCH-PEREZ: Object to the</p> <p>17 form.</p> <p>18 A. I'm thinking. Not at the moment.</p> <p>19 Q. Okay. Did you instruct anyone in</p> <p>20 December of 2020 to make the installment</p> <p>21 payments that were due on December 31st under</p> <p>22 these three term notes?</p> <p>23 MS. DEITSCH-PEREZ: Object to the</p> <p>24 form, asked and answered.</p> <p>25 A. No.</p>
<p>Page 462</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Okay. Did you take any steps to</p> <p>3 confirm that Highland would make the payments</p> <p>4 that were due under these three term notes at</p> <p>5 the end of the year?</p> <p>6 MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8 A. No. I testified already the first I</p> <p>9 heard about it was a week or two later. And I</p> <p>10 called up Frank and confirmed with him to make</p> <p>11 sure they got paid and make sure they were back</p> <p>12 in compliance.</p> <p>13 Q. Okay.</p> <p>14 MR. MORRIS: I move to strike</p> <p>15 everything after the word "no."</p> <p>16 Q. Do you know whether anybody on</p> <p>17 behalf of any of the three corporate obligors</p> <p>18 under the term notes ever directed Highland to</p> <p>19 make the payments under them at the end of the</p> <p>20 year?</p> <p>21 MS. DEITSCH-PEREZ: Object to the</p> <p>22 form.</p> <p>23 A. Not before the end of the year, no.</p> <p>24 Q. Okay. And you know whether</p> <p>25 anybody acting on behalf of any of the three</p>	<p>Page 463</p> <p>1 DONDERO - 10/29/21</p> <p>2 corporate obligors under the term notes ever</p> <p>3 took any steps in December 2020 to make sure</p> <p>4 that Highland would, in fact, make the payments</p> <p>5 that were due at year-end?</p> <p>6 MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8 A. No, there was a reliance on</p> <p>9 Highland.</p> <p>10 Q. Okay. Is it your testimony that</p> <p>11 Highland was authorized to make the payments</p> <p>12 under the notes at year-end without being</p> <p>13 directed by a representative of the three</p> <p>14 corporate obligors?</p> <p>15 A. Yes. It is my contention that that</p> <p>16 is how it worked in prior years also.</p> <p>17 Q. And so you believe that nobody on</p> <p>18 behalf of any of the corporate obligors ever</p> <p>19 authorized or directed Highland to make the</p> <p>20 payments but that Highland did it without --</p> <p>21 without direction?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form.</p> <p>24 A. Yes, typically. And in 2017 or</p> <p>25 2018, 2019, for sure.</p>

<p>Page 464</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Okay. We have looked at one – at</p> <p>3 one December 3rd letter. I mean, do you</p> <p>4 remember that you also received a number of</p> <p>5 letters on December 3rd demanding payment on</p> <p>6 certain promissory notes?</p> <p>7 A. No.</p> <p>8 Q. All right.</p> <p>9 MR. MORRIS: Can we call up</p> <p>10 Exhibit 2, please. No, I apologize. Not</p> <p>11 Exhibit 2, Exhibit 4.</p> <p>12 (Exhibit 4 marked.)</p> <p>13 MS. DEITSCH-PEREZ: Exhibit 4 in the</p> <p>14 notebook?</p> <p>15 MR. MORRIS: Yes, ma'am.</p> <p>16 Okay. And now let's – let's go to</p> <p>17 the exhibits. Exhibit 2, Exhibit 3,</p> <p>18 Exhibit 4, Exhibit 5.</p> <p>19 Q. Do you see, sir, that this is a</p> <p>20 letter addressed to you on behalf of HCRE</p> <p>21 Partners that is also dated December 3rd, 2020?</p> <p>22 A. Yes.</p> <p>23 Q. Does that refresh your recollection</p> <p>24 that you also received notices, demand notices</p> <p>25 on or around December 3rd, 2020, with respect</p>	<p>Page 465</p> <p>1 DONDERO - 10/29/21</p> <p>2 to notes that were held by Highland?</p> <p>3 A. No.</p> <p>4 Q. Do you recall this letter at all?</p> <p>5 A. No, if I – if I had, I would have</p> <p>6 made the forgiveness argument or I would have</p> <p>7 told someone to make the forgiveness argument,</p> <p>8 but I don't remember this at all.</p> <p>9 Q. Okay. Is it fair to say that</p> <p>10 neither you nor anyone acting on behalf of</p> <p>11 yourself, HCMS, or HCRE ever responded to any</p> <p>12 of the demand letters at the beginning of</p> <p>13 December 2020?</p> <p>14 MS. DEITSCH-PEREZ: Object to the</p> <p>15 form.</p> <p>16 A. Yes, I don't – I don't know.</p> <p>17 Q. You don't have any knowledge of</p> <p>18 that; is that fair?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 A. I don't know.</p> <p>22 Q. And you don't have any knowledge of</p> <p>23 anybody responding to any demand letter that</p> <p>24 was sent to HCMFA; correct?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>
<p>Page 466</p> <p>1 DONDERO - 10/29/21</p> <p>2 form.</p> <p>3 A. HCMFA or Services?</p> <p>4 Q. HCMFA?</p> <p>5 A. I – I don't know. I don't have any</p> <p>6 knowledge.</p> <p>7 MR. MORRIS: Can we put up</p> <p>8 Exhibit 1, please.</p> <p>9 (Exhibit 1 marked.)</p> <p>10 MR. MORRIS: We probably want to go</p> <p>11 to Exhibit 3 of that document.</p> <p>12 Q. This one was sent to Mr. Waterhouse.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And did you become aware on</p> <p>16 or around December 3rd, 2020, that Highland</p> <p>17 made demand under the two notes listed in this</p> <p>18 letter?</p> <p>19 A. Yes. Why would this one go to</p> <p>20 Frank Waterhouse?</p> <p>21 Q. Was he the treasurer – was he the</p> <p>22 treasurer of Highland Capital Management Fund</p> <p>23 Advisors at the time?</p> <p>24 A. Right.</p> <p>25 Q. So does it make sense that the payee</p>	<p>Page 467</p> <p>1 DONDERO - 10/29/21</p> <p>2 on a note might send a demand letter to the</p> <p>3 treasurer of the maker of the note?</p> <p>4 MS. DEITSCH-PEREZ: Object to form.</p> <p>5 A. I'm just saying they could have sent</p> <p>6 the NexPoint letter or the Services letter to</p> <p>7 him also; right?</p> <p>8 Q. I don't – I think the NexPoint is</p> <p>9 only a term note; right? So there is no demand</p> <p>10 letter.</p> <p>11 A. No, I know that. But whatever –</p> <p>12 whatever the other one we were just looking at,</p> <p>13 the Services one could have gone to him, too.</p> <p>14 Anyway, whatever. It doesn't</p> <p>15 matter. But, no, I don't have a specific</p> <p>16 recollection of this, if that was your</p> <p>17 question.</p> <p>18 Q. You don't have – you don't have any</p> <p>19 recollection of Highland making demand under</p> <p>20 promissory notes that were issued by you and</p> <p>21 certain of your affiliates in early December</p> <p>22 2020. You don't remember that at all?</p> <p>23 A. There was a lot going on then. And,</p> <p>24 again, it wasn't something that we either</p> <p>25 thought was legitimate based on forgiveness or</p>

<p>Page 468</p> <p>1 DONDERO - 10/29/21</p> <p>2 other issues or it wasn't things that we</p> <p>3 thought were legitimate as part of the overall</p> <p>4 settlement.</p> <p>5 You've got to remember we didn't</p> <p>6 realize Seery betrayed the estate at this</p> <p>7 point. We thought we were moving towards, you</p> <p>8 know, resolution or a pot plan.</p> <p>9 Q. Okay.</p> <p>10 MR. MORRIS: I move to strike.</p> <p>11 Q. And please listen carefully to my</p> <p>12 question.</p> <p>13 Did you have any knowledge in early</p> <p>14 December 2020 that Highland made demand for</p> <p>15 payment under demand notes that were issued by</p> <p>16 you and certain of your affiliates?</p> <p>17 A. Same answer.</p> <p>18 Q. Were you aware or you were not</p> <p>19 aware?</p> <p>20 A. Well, no specific knowledge for the</p> <p>21 reasons articulated in the answer that you –</p> <p>22 you moved to strike.</p> <p>23 Q. Okay. So – so you had – you had</p> <p>24 no particularized knowledge of the demands in</p> <p>25 December 2020; correct?</p>	<p>Page 469</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. Right.</p> <p>3 Q. Okay. And so it is fair to say that</p> <p>4 you never directed anybody to respond to these</p> <p>5 demands because you didn't have knowledge of</p> <p>6 them; correct?</p> <p>7 A. Right.</p> <p>8 Q. Okay. Do you know whether anybody</p> <p>9 responded on behalf – on your behalf or any of</p> <p>10 the corporate obligors' behalf to any of the</p> <p>11 demand letters that were – that you now know</p> <p>12 were sent in early December 2020?</p> <p>13 A. Well, yes. I mean, I know</p> <p>14 eventually. I don't know when, but I don't</p> <p>15 think anybody believes these – these HVIN</p> <p>16 notes are legitimate notes.</p> <p>17 I know the response was more around</p> <p>18 it being payments for the TerreStar regulatory</p> <p>19 obligations for all the things that Highland</p> <p>20 had mucked up in the TerreStar situation.</p> <p>21 Q. While you were president of that</p> <p>22 entity; right?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And – and</p> <p>25 PricewaterhouseCoopers certainly doesn't think</p>
<p>Page 470</p> <p>1 DONDERO - 10/29/21</p> <p>2 these are frivolous obligations, does it?</p> <p>3 MS. DEITSCH-PEREZ: Object to the</p> <p>4 form.</p> <p>5 A. PricewaterhouseCoopers doesn't –</p> <p>6 Q. PricewaterhouseCoopers specifically</p> <p>7 included a disclosure of all of these</p> <p>8 promissory notes in the audited financial</p> <p>9 statements; correct?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 A. I mean, as they should have with the</p> <p>13 information they had at the time, but I think</p> <p>14 what has come out since then is that they – it</p> <p>15 was moneys that moved from Highland to HFAM for</p> <p>16 things that were caused by Highland and people,</p> <p>17 not me, not even Frank, I think, but other</p> <p>18 people assumed it was a note and made notes out</p> <p>19 of it. And that is what PricewaterhouseCoopers</p> <p>20 put into the financials, but I think what</p> <p>21 everybody acknowledges is that they were</p> <p>22 never – they were never notes.</p> <p>23 Q. Is there a document that you have</p> <p>24 ever seen in your life that supports what you</p> <p>25 just said?</p>	<p>Page 471</p> <p>1 DONDERO - 10/29/21</p> <p>2 MS. DEITSCH-PEREZ: Object to the</p> <p>3 form.</p> <p>4 A. Yes.</p> <p>5 Q. Can you identify that document for</p> <p>6 me?</p> <p>7 A. Yeah. It is a – it is a settlement</p> <p>8 with the SEC in terms of what they said the</p> <p>9 breaches were, and why they were finding HFAM,</p> <p>10 the rationale that they had in the regulatory</p> <p>11 breaches and in the settlement, and all of the</p> <p>12 breaches in the settlement were things that</p> <p>13 Highland did, not that HFAM did.</p> <p>14 It was all valuation, it was all –</p> <p>15 it was all services that HFAM had contracted</p> <p>16 with Highland that were performed deficiently</p> <p>17 in the eyes of the SEC.</p> <p>18 Q. Okay. We will – we will get to</p> <p>19 that in more detail, but I just would like to</p> <p>20 know if you believe that any correspondence to</p> <p>21 the SEC specifically stated that Highland</p> <p>22 Capital Management, L.P. and not Highland</p> <p>23 Capital Management Fund Advisors, L.P. was</p> <p>24 responsible for the TerreStar valuation error.</p> <p>25 A. The SEC would not have parsed</p>

<p>Page 472</p> <p>1 DONDERO - 10/29/21</p> <p>2 between the different players in the entities.</p> <p>3 They would have said what they thought the</p> <p>4 breaches were overall in their letter, and what</p> <p>5 would govern the split is the shared services</p> <p>6 agreement and where were the employees that</p> <p>7 performed the activities that they cited.</p> <p>8 Q. Okay. We will get to that at a</p> <p>9 later time.</p> <p>10 All right. Let's go back to the</p> <p>11 oral agreements that you entered into with the</p> <p>12 Dugaboy trustee.</p> <p>13 MR. MORRIS: And let's start by</p> <p>14 putting back up Exhibit 31, Paragraph 82.</p> <p>15 MS. JEFFRIES: I'm sorry, can you</p> <p>16 repeat that?</p> <p>17 MR. MORRIS: Yes. Exhibit 31,</p> <p>18 Paragraph 82, yes.</p> <p>19 Q. And, again, Mr. Dondero, I think you</p> <p>20 have testified already that you believe</p> <p>21 Paragraph 82 generally describes the oral</p> <p>22 agreement that you entered into with the</p> <p>23 Dugaboy trustee with respect to the promissory</p> <p>24 notes that we've described; right?</p> <p>25 A. Yes.</p>	<p>Page 473</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. And – and it is – and that</p> <p>3 includes the promissory notes that you signed</p> <p>4 that Highland is suing on as well as the</p> <p>5 promissory notes that HCRE, HCMS, and NexPoint</p> <p>6 signed that Highland is suing on; correct?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Do you contend that the oral</p> <p>9 agreements that you entered into with the</p> <p>10 Dugaboy trustee modified the parties' rights</p> <p>11 under the original promissory notes?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form.</p> <p>14 A. Modify, boy, sounds like a legal</p> <p>15 term. It said conditions by which they could</p> <p>16 be forgiven.</p> <p>17 Q. And there were no such conditions in</p> <p>18 the original notes; right?</p> <p>19 A. That is correct.</p> <p>20 Q. Okay. So I'm just asking you from</p> <p>21 your perspective whether the oral agreements</p> <p>22 that you entered into with the Dugaboy trustee</p> <p>23 were intended to modify the parties' rights and</p> <p>24 obligations under the original promissory</p> <p>25 notes.</p>
<p>Page 474</p> <p>1 DONDERO - 10/29/21</p> <p>2 MS. DEITSCH-PEREZ: Object to the</p> <p>3 form.</p> <p>4 A. It was meant to condition the</p> <p>5 forgiveness.</p> <p>6 Q. Did it change –</p> <p>7 A. I would like to use those words</p> <p>8 versus modified the agreement.</p> <p>9 Q. Did it – did it alter the parties'</p> <p>10 rights and obligations?</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 Q. I'm not trying to play a game with</p> <p>14 you. I just –</p> <p>15 MS. DEITSCH-PEREZ: That is exactly</p> <p>16 what you are doing. Why don't you just ask</p> <p>17 him –</p> <p>18 MR. MORRIS: Please stop talking.</p> <p>19 Please stop talking.</p> <p>20 Q. Mr. Dondero, is it fair to say that</p> <p>21 the promissory notes that are the subject of</p> <p>22 your oral agreements with the Dugaboy –</p> <p>23 Dugaboy trustee set forth the parties' rights</p> <p>24 and obligations thereunder, both the maker and</p> <p>25 the payee?</p>	<p>Page 475</p> <p>1 DONDERO - 10/29/21</p> <p>2 MS. DEITSCH-PEREZ: Can you read</p> <p>3 that back again.</p> <p>4 Q. Is it fair to say that the original</p> <p>5 promissory notes that are the subject of the</p> <p>6 oral agreements between you and the Dugaboy –</p> <p>7 withdrawn.</p> <p>8 Is it fair to say that the original</p> <p>9 promissory notes that Highland is suing under</p> <p>10 set forth the maker and the payees' rights and</p> <p>11 obligations under those notes?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form. Object to the form.</p> <p>14 A. Yeah, I – again, I want to – I</p> <p>15 want to avoid using the term "modification" or</p> <p>16 implying modification because, again, the notes</p> <p>17 are soft, and they really just talk about a</p> <p>18 rate and/or payment or amortizations, but</p> <p>19 they're soft notes. Something in the agreement</p> <p>20 that lays out the conditions for forgiveness</p> <p>21 aren't necessarily a modification of the note,</p> <p>22 and I'd like that to be –</p> <p>23 Q. Let me –</p> <p>24 A. – my testimony.</p> <p>25 Q. Let me ask it this way: Under each</p>



<p>Page 476</p> <p>1 DONDERO - 10/29/21</p> <p>2 of the demand notes, Highland as the payee had</p> <p>3 the unfettered right to demand payment at any</p> <p>4 time; correct? Did you understand that?</p> <p>5 MS. DEITSCH-PEREZ: At the time that</p> <p>6 the notes were first signed?</p> <p>7 MR. MORRIS: Yes, ma'am.</p> <p>8 A. Yeah. I mean, at the -- at the time</p> <p>9 that they were first put in place, but by the</p> <p>10 time the demand was made, they had already been</p> <p>11 subject to the conditions present or the</p> <p>12 conditions for forgiveness.</p> <p>13 Q. Okay. So this is exactly what I'm</p> <p>14 trying to get at. At the time the notes were</p> <p>15 signed, Highland had the right to make demand</p> <p>16 for payment at any time; correct?</p> <p>17 A. Yes.</p> <p>18 Q. And when you entered into the oral</p> <p>19 agreements with the Dugaboy trustee, Highland's</p> <p>20 right to make a demand -- pick your word,</p> <p>21 modified, altered, amended, changed -- it</p> <p>22 was -- your oral agreement had an impact on</p> <p>23 Highland's rights under the promissory notes;</p> <p>24 correct?</p> <p>25 MS. DEITSCH-PEREZ: Object to form</p>	<p>Page 477</p> <p>1 DONDERO - 10/29/21</p> <p>2 of the question.</p> <p>3 Q. You can answer.</p> <p>4 A. The conditions subsequent -- the</p> <p>5 condition precedent -- precedence for</p> <p>6 forgiveness changed the ability for the demand</p> <p>7 notes to be demanded.</p> <p>8 Q. Okay. And -- and each of the oral</p> <p>9 agreements that you entered into with the</p> <p>10 Dugaboy trustee was related to the loans that</p> <p>11 were reflected in the promissory notes;</p> <p>12 correct?</p> <p>13 A. Well, it was related to the</p> <p>14 promissory notes themselves.</p> <p>15 Q. Correct. And the promissory notes</p> <p>16 reflect notes that were made from the payee to</p> <p>17 the maker; correct?</p> <p>18 A. Yeah. Most of them were roll-ups</p> <p>19 from prior.</p> <p>20 Q. No. Those are the term notes. I'm</p> <p>21 only talking about the demand notes.</p> <p>22 A. Okay.</p> <p>23 Q. Okay. So with respect to the demand</p> <p>24 notes, the oral agreements that you entered</p> <p>25 into with the Dugaboy trustee related to the</p>
<p>Page 478</p> <p>1 DONDERO - 10/29/21</p> <p>2 loans that were the subject of the promissory</p> <p>3 notes; correct?</p> <p>4 A. Yeah, I -- I -- I am just not</p> <p>5 understanding the nuance enough to answer that</p> <p>6 question.</p> <p>7 Q. Did the oral agreements relate to</p> <p>8 the loans that were the subject of the</p> <p>9 promissory notes?</p> <p>10 A. The oral agreements affected the</p> <p>11 term loans and the demand notes.</p> <p>12 Q. Okay.</p> <p>13 A. Does that answer your question?</p> <p>14 Q. And so -- and so is it fair to say</p> <p>15 that the oral agreements related to -- to</p> <p>16 the -- to the -- to the loans that were the</p> <p>17 subject of the notes?</p> <p>18 A. I don't know.</p> <p>19 Q. Okay.</p> <p>20 A. I'm not -- I'm not sure what you are</p> <p>21 asking, but I don't know the answer.</p> <p>22 Q. Okay. It is your --</p> <p>23 MS. DEITSCH-PEREZ: John, just</p> <p>24 how -- I just think the witness is lagging</p> <p>25 a little. So how much longer do you think</p>	<p>Page 479</p> <p>1 DONDERO - 10/29/21</p> <p>2 you have?</p> <p>3 MR. MORRIS: Oh, I've got probably</p> <p>4 four hours, so I don't expect to finish</p> <p>5 today. If Mr. Dondero -- if Mr. Dondero</p> <p>6 wants to stop --</p> <p>7 Q. Are you unable to continue right</p> <p>8 now, Mr. Dondero?</p> <p>9 A. Well, if we have four more hours, I</p> <p>10 would rather do it a day next -- next week, one</p> <p>11 afternoon.</p> <p>12 MR. MORRIS: Okay. Can we check our</p> <p>13 calendars before we go off the record?</p> <p>14 We have a deposition on Tuesday.</p> <p>15 I'm not available on Monday. I can make</p> <p>16 myself free on Wednesday, Thursday, or</p> <p>17 Friday. And I think that we should expect,</p> <p>18 you know, a substantial period of time,</p> <p>19 perhaps as long as a full day.</p> <p>20 I mean, with all due respect --</p> <p>21 MS. DEITSCH-PEREZ: How do you have</p> <p>22 a full day? You have already gone -- you</p> <p>23 have already gone more than half a day.</p> <p>24 MR. MORRIS: Yeah. And just -- just</p> <p>25 to be clear -- and I'm happy, you know,</p>

<p>Page 480</p> <p>1 DONDERO - 10/29/21</p> <p>2 to – to discuss this with you offline, but</p> <p>3 I didn't decide that Mr. Dondero would</p> <p>4 appear in his personal capacity and on</p> <p>5 behalf of three separate 30(b)(6)</p> <p>6 witnesses.</p> <p>7 If you had given me a different</p> <p>8 witness for each, I would have a total of</p> <p>9 28 hours. I don't expect to use anything</p> <p>10 remotely close to that time, but I am</p> <p>11 examining four witnesses here and I</p> <p>12 would – I would appreciate –</p> <p>13 MS. DEITSCH-PEREZ: But we also –</p> <p>14 MR. MORRIS: I would appreciate it.</p> <p>15 And, look, you can stop me at any time. If</p> <p>16 I haven't finished asking the questions</p> <p>17 that I believe I'm entitled to, I will, you</p> <p>18 know, take it to the judge. I'm just</p> <p>19 putting you on notice. I have – I'm on</p> <p>20 page 27 of a 57-page outline, so...</p> <p>21 MS. DEITSCH-PEREZ: Oh, geez.</p> <p>22 MR. MORRIS: Yeah, so I do have a</p> <p>23 fair amount more to cover. Okay?</p> <p>24 MS. DEITSCH-PEREZ: All right.</p> <p>25 MR. MORRIS: So Wednesday, Thursday,</p>	<p>Page 481</p> <p>1 DONDERO - 10/29/21</p> <p>2 or Friday, Mr. Dondero, I will make myself</p> <p>3 available at your convenience.</p> <p>4 THE WITNESS: I have all day board</p> <p>5 meetings on Wednesday.</p> <p>6 MR. MORRIS: Okay.</p> <p>7 THE WITNESS: I could do Thursday</p> <p>8 afternoon or I can do Friday afternoon.</p> <p>9 Hold on.</p> <p>10 MS. DEITSCH-PEREZ: Let me put this</p> <p>11 on mute and we will look at our calendars.</p> <p>12 MR. MORRIS: Thank you.</p> <p>13 VIDEOGRAPHER: Do you want to stay</p> <p>14 on the record?</p> <p>15 MR. MORRIS: Yes, please.</p> <p>16 THE WITNESS: Hello. All right. I</p> <p>17 can do Thursday afternoon for four hours.</p> <p>18 And if we need more time than that we can</p> <p>19 either do Friday afternoon or sometime</p> <p>20 the – the week after that, but I have – I</p> <p>21 have got –</p> <p>22 MR. MORRIS: Thank you very much.</p> <p>23 What time on Thursday works for you,</p> <p>24 sir?</p> <p>25 THE WITNESS: How about 1:00 o'clock</p>
<p>Page 482</p> <p>1 DONDERO - 10/29/21</p> <p>2 my time?</p> <p>3 MR. MORRIS: Okay. I appreciate it.</p> <p>4 Thank you very much. 1:00 o'clock Central,</p> <p>5 it is, next Thursday for the continuation</p> <p>6 of this.</p> <p>7 And hopefully I will finish that</p> <p>8 day, you know, if we can go without a lot</p> <p>9 of breaks and the rest of it. Hopefully I</p> <p>10 can finish that day. My intention is to do</p> <p>11 that. Okay?</p> <p>12 THE WITNESS: Perfect. Thank you.</p> <p>13 MS. DEITSCH-PEREZ: Can – can I get</p> <p>14 the rough?</p> <p>15 COURT REPORTER: Yes. Yes.</p> <p>16 MR. MORRIS: All right. We can go</p> <p>17 off the record.</p> <p>18 MS. DEITSCH-PEREZ: Thank you.</p> <p>19 COURT REPORTER: Thank you.</p> <p>20 VIDEOGRAPHER: Off the record, 3:53.</p> <p>21 (Deposition adjourned at 3:53 p.m.)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 483</p> <p>1 DONDERO - 10/29/21</p> <p>2 _____</p> <p>3 JAMES DONDERO</p> <p>4</p> <p>5 Subscribed and sworn to before me</p> <p>6 this day of 2021.</p> <p>7</p> <p>8 _____</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1	DONDERO - 10/29/21	1	DONDERO - 10/29/21
2	C E R T I F I C A T E	2	NAME OF CASE: In re: Highland Capital
3		3	DATE OF DEPOSITION: October 29, 2021
4	I, SUSAN S. KLINGER, a certified shorthand	4	NAME OF WITNESS: James Dondero
5	reporter within and for the State of Texas, do	5	Reason Codes:
6	hereby certify:	6	1. To clarify the record.
7	That JAMES DONDERO, the witness whose	7	2. To conform to the facts.
8	deposition is hereinbefore set forth, was duly	8	3. To correct transcription errors.
9	sworn by me and that such deposition is a true	9	Page____Line____Reason_____
10	record of the testimony given by such witness.	10	From_____to_____
11	I further certify that I am not related to	11	Page____Line____Reason_____
12	any of the parties to this action by blood or	12	From_____to_____
13	marriage; and that I am in no way interested in	13	Page____Line____Reason_____
14	the outcome of this matter.	14	From_____to_____
15	IN WITNESS WHEREOF, I have hereunto set my	15	Page____Line____Reason_____
16	hand this 29th of October, 2021.	16	From_____to_____
17		17	Page____Line____Reason_____
18	_____	18	From_____to_____
19	Susan S. Klinger, RMR-CRR, CSR	19	Page____Line____Reason_____
20	Texas CSR# 6531	20	From_____to_____
21		21	Page____Line____Reason_____
22		22	From_____to_____
23		23	Page____Line____Reason_____
24		24	From_____to_____
25		25	



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## **EXHIBIT 99**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re: :  
: Chapter 11  
: Case No.  
HIGHLAND CAPITAL MANAGEMENT, : 19-34054-sgj11  
L.P. :  
Debtor. :  
-----  
:  
HIGHLAND CAPITAL MANAGEMENT, :  
L.P. :  
:  
Plaintiff, :  
:  
vs. : Adversary  
: Proceeding No.  
NEXPOINT ADVISORS, L.P., : 21-03005-sgj  
JAMES DONDERO, NANCY DONDERO, :  
AND THE DUGABOY INVESTMENT :  
TRUST, :  
:  
Defendants. :  
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REMOTE VIDEO DEPOSITION OF JAMES DONDERO

VOLUME III

Thursday, November 4, 2021

JOB NO. 202288

Page 2	Page 3
<p>1 2 3 4 November 4, 2021 5 1:17 p.m. CDT 6 7 8 Remote video deposition of JAMES 9 DONDERO taken in the above-entitled matter 10 before Suzanne J. Stotz, a Certified Shorthand 11 Reporter, Certified Realtime Reporter, 12 Registered Professional Reporter, and Notary 13 Public of the State of Texas, on Thursday, 14 November 4, 2021, commencing at 1:17 p.m. CDT. 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 APPEARANCES: 2 3 Attorneys for Highland Capital Management L.P.: 4 (Via videoconference) PACHULSKI STANG ZIEHL &amp; JONES 5 780 Third Avenue 6 New York, New York 10017 7 BY: JOHN MORRIS, ESQ. 8 HAYLEY WINOGRAD, ESQ. 9 10 Attorneys for NexPoint Advisors, L.P.: 11 (Via videoconference) MUNSCH HARDT KOPF &amp; HARR 12 500 North Akard Street Dallas, Texas 75201 13 14 BY: THOMAS BERGHMAN, ESQ. 15 16 Attorneys for James Dondero, Nancy Dondero, HCRE HCMS: 17 18 (Via videoconference) STINSON 3102 Oak Lawn Avenue 19 Dallas, Texas 75219 20 BY: DEBORAH DEITSCH-PEREZ, ESQ 21 BY: MICHAEL AIGEN, ESQ. 22 23 24 25</p>
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<p>1 APPEARANCES (Continued): 2 3 Attorneys for Nancy Dondero: 4 (Via videoconference) GREENBERG TRAUERIG 5 220 Ross Avenue Dallas, Texas 75201 6 7 BY: DANIEL ELMS, ESQ. 8 9 Attorneys for The Dugaboy Investment Trust: 10 (Via videoconference) HELLER, DRAPER, HAYDEN, PATRICK &amp; HORN 11 650 Poydras Street New Orleans, Louisiana 70130 12 13 14 BY: DOUGLAS DRAPER, ESQ. MICHAEL LANDIS, ESQ. 15 16 Attorneys for The Litigation Trust: 17 (Via videoconference) QUINN EMANUEL URQUHART &amp; SULLIVAN 18 51 Madison Avenue New York, New York 10010 19 20 21 BY: ROBERT LOIGMAN, ESQ. DEBORAH NEWMAN, ESQ. 22 23 24 25</p>	<p>1 APPEARANCES (Continued): 2 3 ALSO PRESENT: 4 (Via Videoconference) JACOB ARVOLD, Videographer 5 6 (Via Videoconference) LA ASIA CANTY, Legal Assistant c/o Pachulski Stang Ziehl &amp; Jones 7 8 (Via Videoconference) AARON LAWRENCE, Law Clerk c/o Quinn Emanuel Urquhart &amp; Sullivan 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

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<div>Page 8</div> <div>1 JAMES DONDERO</div> <div>2 THE VIDEOGRAPHER: Good afternoon.</div> <div>3 My name is Jacob Arvold. I'm a certified</div> <div>4 legal videographer in association with</div> <div>5 TSG Reporting, Inc.</div> <div>6 Due to the severity of COVID-19 and</div> <div>7 following the practice of social</div> <div>8 distancing, I will not be in the same room</div> <div>9 with the witness; instead, I will record</div> <div>10 this video deposition remotely.</div> <div>11 The reporter, Suzanne Stotz, also</div> <div>12 will not be in the same room and will swear</div> <div>13 the witness remotely.</div> <div>14 Do all parties stipulate to the</div> <div>15 validity of video recording and remote</div> <div>16 swearing and that it will be admissible in</div> <div>17 the courtroom as if it had been taken</div> <div>18 following Rule 30 of the Federal Rules of</div> <div>19 Civil Procedures and the state's rules</div> <div>20 where this case is pending?</div> <div>21 MR. MORRIS: Yes.</div> <div>22 If anybody objects to that, please</div> <div>23 speak up.</div> <div>24 Nobody has spoken up. So everybody</div> <div>25 is deemed to have accepted that.</div>	<div>Page 9</div> <div>1 JAMES DONDERO</div> <div>2 THE VIDEOGRAPHER: Thank you.</div> <div>3 This is the start of Media Number 1,</div> <div>4 Volume II [sic] of the video-recorded</div> <div>5 deposition of James Dondero in the matter</div> <div>6 of In Re: Highland Capital Management,</div> <div>7 L.P., in the United States Bankruptcy Court</div> <div>8 for the Northern District of Texas.</div> <div>9 This deposition is being held</div> <div>10 remotely on November 4, 2021, at</div> <div>11 approximately 1:17 p.m.</div> <div>12 Counsel, please introduce</div> <div>13 yourselves.</div> <div>14 MR. MORRIS: Everybody is – is on</div> <div>15 here. I don't – we can't take the time to</div> <div>16 do that. I'm familiar with everybody on</div> <div>17 here. Everybody's appeared in this action</div> <div>18 before, and I'd like to proceed.</div> <div>19 THE VIDEOGRAPHER: All right. The</div> <div>20 appearances will be on the stenographic</div> <div>21 record.</div> <div>22 Will the court reporter please</div> <div>23 reswear the witness.</div> <div>24 THE COURT REPORTER: Could you raise</div> <div>25 your hand.</div>

<p>Page 10</p> <p>1 JAMES DONDERO</p> <p>2 THE WITNESS: (Complies with</p> <p>3 request.)</p> <p>4 JAMES DONDERO,</p> <p>5 having first been duly sworn, was examined and</p> <p>6 testified as follows:</p> <p>7 MS. DEITSCH-PEREZ: I only have one</p> <p>8 questions. Who's Robert Loigman?</p> <p>9 MR. LOIGMAN: I already stated for</p> <p>10 the record. I'm with Quinn Emanuel. I'm</p> <p>11 Debbie Newman's partner.</p> <p>12 MS. DEITSCH-PEREZ: Okay. Thank</p> <p>13 you.</p> <p>14 MR. MORRIS: Can we please put up on</p> <p>15 the screen the document that's been marked</p> <p>16 Exhibit 31.</p> <p>17 MS. CANTY: (Complies with request.)</p> <p>18 EXAMINATION</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. Mr. Dondero, do you understand that</p> <p>21 this is a continuation of your deposition from</p> <p>22 Friday?</p> <p>23 A. Yes.</p> <p>24 Q. Have you spoken with anybody about</p> <p>25 your testimony since we concluded the</p>	<p>Page 11</p> <p>1 JAMES DONDERO</p> <p>2 deposition on Friday?</p> <p>3 A. No.</p> <p>4 Q. Nobody in the world?</p> <p>5 A. Just my attorney.</p> <p>6 Q. And did you speak with your attorney</p> <p>7 about the substance of the deposition on</p> <p>8 Friday? Just –</p> <p>9 MS. DEITSCH-PEREZ: I'm going to</p> <p>10 direct – I'm going to direct him not to</p> <p>11 answer.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. Okay. I'm just asking you a</p> <p>14 yes-or-no question. I'm not asking for the</p> <p>15 substance of any communications.</p> <p>16 MS. DEITSCH-PEREZ: Well, you're –</p> <p>17 one, I'd have to talk to him to see what he</p> <p>18 thinks "substance" means.</p> <p>19 And to the extent that's</p> <p>20 substantive, you're actually getting at the</p> <p>21 content potentially of a discussion. So</p> <p>22 I'm going to direct him not to answer.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. Are you going to follow your</p> <p>25 counsel's advice?</p>
<p>Page 12</p> <p>1 JAMES DONDERO</p> <p>2 A. Yes.</p> <p>3 Q. How much time did you spend speaking</p> <p>4 with your attorney since the conclusion of the</p> <p>5 last deposition?</p> <p>6 A. 30 minutes, 40 minutes.</p> <p>7 Q. Are you aware that Alan Johnson</p> <p>8 testified in this case the other day?</p> <p>9 A. I don't know who Alan Johnson is.</p> <p>10 Uh, no.</p> <p>11 Q. Okay. Is it fair to say that you</p> <p>12 have no knowledge of Mr. Johnson's testimony?</p> <p>13 A. I have no knowledge of Mr. Johnson's</p> <p>14 testimony.</p> <p>15 Q. Are you aware that an expert was</p> <p>16 examined by me earlier in the week in</p> <p>17 connection with this case?</p> <p>18 A. I'm aware there's an expert. I'm</p> <p>19 not – I'm not aware that you've examined,</p> <p>20 deposed, or whatever you did with him.</p> <p>21 Q. Okay. When did you speak with your</p> <p>22 counsel for 30 minutes about – following last</p> <p>23 Friday's examination?</p> <p>24 A. About 40 minutes ago.</p> <p>25 Q. Okay.</p>	<p>Page 13</p> <p>1 JAMES DONDERO</p> <p>2 MR. MORRIS: Can we go to</p> <p>3 paragraph 82 of this document –</p> <p>4 Q. – Mr. Dondero, do you see that this</p> <p>5 is your answer to the Plaintiff's Amended</p> <p>6 Complaint.</p> <p>7 A. Yes.</p> <p>8 Q. And we looked at this the other day;</p> <p>9 do you remember that?</p> <p>10 A. Yes.</p> <p>11 MR. MORRIS: Can we can go to page–</p> <p>12 paragraph 82, please.</p> <p>13 MS. CANTY: (Complies with request.)</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. And I just want to table set to make</p> <p>16 sure we're on the same page.</p> <p>17 Paragraph 82 describes the</p> <p>18 agreements that you entered into with Dugaboy</p> <p>19 consuming the forgiveness of certain Promissory</p> <p>20 Notes subject to conditions subsequent.</p> <p>21 Is that a fair overarching overview</p> <p>22 of the nature of the agreements?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And for the rest of the</p> <p>25 deposition today, when I use the phrase</p>

<p>Page 14</p> <p>1 JAMES DONDERO</p> <p>2 "agreements," I'm going to mean the agreements</p> <p>3 that are referred to in paragraph 82; is that</p> <p>4 fair?</p> <p>5 A. Yes, generally. If I have any</p> <p>6 questions, I'll – I'll ask.</p> <p>7 Q. Thank you very much.</p> <p>8 The agreements covered each of the</p> <p>9 notes that are the subject of the lawsuits that</p> <p>10 Highland commenced against you, HCRE Services,</p> <p>11 and NexPoint; is that right?</p> <p>12 A. The – yes.</p> <p>13 Q. What are you looking at?</p> <p>14 A. Just this note sheet that covers all</p> <p>15 the notes.</p> <p>16 Q. Oh.</p> <p>17 MR. MORRIS: Deborah, I would demand</p> <p>18 that that sheet be produced immediately.</p> <p>19 MS. DEITSCH-PEREZ: Okay.</p> <p>20 MR. MORRIS: Okay. And I would ask</p> <p>21 him to put it away.</p> <p>22 MS. DEITSCH-PEREZ: No. He's a</p> <p>23 30(b)(6) witness. He's entitled to have a</p> <p>24 list of the notes. He sure he is.</p> <p>25 MR. MORRIS: I'm telling you now –</p>	<p>Page 15</p> <p>1 JAMES DONDERO</p> <p>2 MS. DEITSCH-PEREZ: I'm sorry to say</p> <p>3 to you.</p> <p>4 MR. MORRIS: I object. That is – I</p> <p>5 have never in my life seen a witness –</p> <p>6 MS. DEITSCH-PEREZ: I have had</p> <p>7 30(b)(6) witnesses with whole notebooks of</p> <p>8 information.</p> <p>9 MR. MORRIS: Okay. So let's just</p> <p>10 make sure the record is clear.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Please describe for me what's on</p> <p>13 that page.</p> <p>14 A. It's a listing of the Notes payable</p> <p>15 to Highland, what their original term and</p> <p>16 amount was, what the term is, and what the loan</p> <p>17 date was.</p> <p>18 Q. Okay. I'm going to ask the –</p> <p>19 MS. DEITSCH-PEREZ: No. I'm going</p> <p>20 to take a picture, and I'm going to send it</p> <p>21 to you, okay?</p> <p>22 MR. MORRIS: Okay. And what we're</p> <p>23 going to do right now is ask him to put it</p> <p>24 away, and I'm going to ask him questions</p> <p>25 solely in his capacity as an individual,</p>
<p>Page 16</p> <p>1 JAMES DONDERO</p> <p>2 okay?</p> <p>3 Please put it away.</p> <p>4 THE WITNESS: Isn't that what this</p> <p>5 deposition is, right? This deposition –</p> <p>6 MS. DEITSCH-PEREZ: Well, this</p> <p>7 deposition is both.</p> <p>8 We're going to take a break for a</p> <p>9 second. Let me think about that, but</p> <p>10 I'll –</p> <p>11 MR. MORRIS: I object. I really</p> <p>12 object. I really object. I'm glad that</p> <p>13 this is all on the record. I object.</p> <p>14 My request is that he put it away</p> <p>15 and answer questions in his capacity as an</p> <p>16 individual.</p> <p>17 I don't know why we need to take a</p> <p>18 break.</p> <p>19 MS. DEITSCH-PEREZ: Well, because</p> <p>20 I'm going to go take a picture of it and</p> <p>21 send it to you.</p> <p>22 MR. MORRIS: I don't want you to do</p> <p>23 that, though.</p> <p>24 MS. DEITSCH-PEREZ: Why don't you</p> <p>25 want – okay.</p>	<p>Page 17</p> <p>1 JAMES DONDERO</p> <p>2 MR. MORRIS: We can do that – we</p> <p>3 can do that when I ask him questions as a</p> <p>4 30(b)(6) witness.</p> <p>5 By the way, it's still</p> <p>6 inappropriate, but –</p> <p>7 MS. DEITSCH-PEREZ: No, it's not</p> <p>8 John.</p> <p>9 MR. MORRIS: Okay.</p> <p>10 MS. DEITSCH-PEREZ: It's just not.</p> <p>11 You can say it as much as you want. It</p> <p>12 doesn't make it inappropriate.</p> <p>13 And I am going to – I want to think</p> <p>14 for a minute about whether or not your</p> <p>15 request to have him not have it in front of</p> <p>16 him in his individual capacity is</p> <p>17 appropriate. And I'm not going to make a</p> <p>18 snap decision. I'm going to talk to my</p> <p>19 colleagues, and we'll be back on the record</p> <p>20 in a couple of minutes.</p> <p>21 MR. MORRIS: I object, but I can't</p> <p>22 stop you.</p> <p>23 MS. DEITSCH-PEREZ: Okay.</p> <p>24 THE VIDEOGRAPHER: Would you like to</p> <p>25 go off the video record, Counsel?</p>



<p>Page 18</p> <p>1 JAMES DONDERO</p> <p>2 MR. MORRIS: No, no, not at all.</p> <p>3 THE VIDEOGRAPHER: Okay.</p> <p>4 MR. MORRIS: And just keep the --</p> <p>5 keep the record going.</p> <p>6 THE VIDEOGRAPHER: Yep, will do.</p> <p>7 MR. MORRIS: And we're not off the</p> <p>8 record?</p> <p>9 THE VIDEOGRAPHER: Correct.</p> <p>10 THE COURT REPORTER: Correct.</p> <p>11 MS. DEITSCH-PEREZ: Okay. We're</p> <p>12 back on the record.</p> <p>13 THE VIDEOGRAPHER: We remained on</p> <p>14 the record.</p> <p>15 MS. DEITSCH-PEREZ: Okay. And this</p> <p>16 part -- this -- at this point Mr. Morris</p> <p>17 only taking Mr. Dondero's deposition in his</p> <p>18 personal capacity, not as a 30(b)(6)</p> <p>19 witness.</p> <p>20 If you want to resume taking his</p> <p>21 deposition as a 30(b)(6) witness, let me</p> <p>22 know; and I will tell him to get his list</p> <p>23 of notes.</p> <p>24 MR. MORRIS: So he doesn't have it</p> <p>25 in front of him right now?</p>	<p>Page 19</p> <p>1 JAMES DONDERO</p> <p>2 THE WITNESS: Correct.</p> <p>3 MS. DEITSCH-PEREZ: Correct, he does</p> <p>4 not.</p> <p>5 MR. MORRIS: Okay. I'm going to</p> <p>6 proceed; and I would ask, Deborah, that</p> <p>7 somebody from your office send that to me</p> <p>8 as soon as possible. I'm sure it's on an</p> <p>9 e-mail somewhere and all they have to do is</p> <p>10 hit send.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Mr. Dondero, let's continue.</p> <p>13 So you don't have that document in</p> <p>14 front of you right now?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. How many agreements did you</p> <p>17 enter into with Dugaboy?</p> <p>18 MS. DEITSCH-PEREZ: You mean with</p> <p>19 the Dugaboy trustee?</p> <p>20 We had an agreement that you were</p> <p>21 going to refer to these as the agreements</p> <p>22 with the Dugaboy trustee. So let's stay</p> <p>23 consistent.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Mr. Dondero, how many agreements did</p>
<p>Page 20</p> <p>1 JAMES DONDERO</p> <p>2 you enter into with Dugaboy trustee concerning</p> <p>3 Promissory Notes?</p> <p>4 A. Is your question -- is your</p> <p>5 questions how many Notes were entered into?</p> <p>6 Q. No. How many separate agreements</p> <p>7 did you enter into?</p> <p>8 A. The 2017, '18, and '19 agreements.</p> <p>9 Q. Okay. I didn't ask you what</p> <p>10 agreements. I asked how many agreements you</p> <p>11 entered into with the Dugaboy trustee.</p> <p>12 MS. DEITSCH-PEREZ: Asked and</p> <p>13 answered.</p> <p>14 THE WITNESS: Three major ones.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Are there any minor ones?</p> <p>17 A. Not that I can recall right now.</p> <p>18 Q. Okay. When did you enter into your</p> <p>19 first major agreement with the Dugaboy trustee?</p> <p>20 A. At the end of '17.</p> <p>21 Q. Meaning December 2017 or early 2018?</p> <p>22 A. Yes.</p> <p>23 Q. What Promissory Notes are the</p> <p>24 subject of the first major agreement that you</p> <p>25 entered into with the Dugaboy trust- -- with</p>	<p>Page 21</p> <p>1 JAMES DONDERO</p> <p>2 the Dugaboy trustee?</p> <p>3 A. I don't remember which ones</p> <p>4 specifically. I remember the amount was more</p> <p>5 substantial than subsequent years.</p> <p>6 Q. Do you know how many Promissory</p> <p>7 Notes were the subject of your first major</p> <p>8 agreement with the Dugaboy trustee?</p> <p>9 A. No.</p> <p>10 Q. Can you identify the maker of any</p> <p>11 Note that's subject to the first major</p> <p>12 agreement with the Dugaboy trustee?</p> <p>13 A. Not without my list or details.</p> <p>14 Q. Can you identify the principal</p> <p>15 amount of any Promissory Note that was subject</p> <p>16 to the first agreement that you entered into</p> <p>17 with the Dugaboy trustee?</p> <p>18 A. I know they were -- I know the gross</p> <p>19 amount. I know they were some of the term</p> <p>20 loans, but I don't know the specifics.</p> <p>21 Q. Can you tell me the aggregate</p> <p>22 amount -- withdrawn.</p> <p>23 Can you tell me the aggregate</p> <p>24 principal amount of the Notes that are the</p> <p>25 subject of your first agreement with the</p>

<p>Page 22</p> <p>1 JAMES DONDERO</p> <p>2 Dugaboy trustee?</p> <p>3 A. I – I believe it was 30 – 30 some</p> <p>4 odd million, 30 – I can't remember the</p> <p>5 principal and interest, but it's only 30 – 34,</p> <p>6 35, 36. It was in that range.</p> <p>7 Q. Did your first agreement with the –</p> <p>8 withdrawn.</p> <p>9 Can you identify the date of any of</p> <p>10 the Promissory Notes that are the subject of</p> <p>11 your first agreement with the Dugaboy trustee?</p> <p>12 A. No.</p> <p>13 Q. Can you tell me the year that any of</p> <p>14 the Promissory Notes that are the subject of</p> <p>15 the – withdrawn.</p> <p>16 Can you tell me the year that any of</p> <p>17 the Promissory Notes were entered into that are</p> <p>18 the subject of your first agreement with the</p> <p>19 Dugaboy trustee?</p> <p>20 MS. DEITSCH-PEREZ: Asked and</p> <p>21 answered.</p> <p>22 THE WITNESS: No, not off the top of</p> <p>23 my head.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. When did you – did – when did you</p>	<p>Page 23</p> <p>1 JAMES DONDERO</p> <p>2 enter into the second agreement with the</p> <p>3 Dugaboy trustee?</p> <p>4 Was that in December of 2018 or</p> <p>5 early 2019?</p> <p>6 A. Yes.</p> <p>7 Q. How many Notes are subject to your</p> <p>8 second agreement with the Dugaboy trustee?</p> <p>9 A. Less than the first, but I don't</p> <p>10 know how many.</p> <p>11 Q. You don't know the number of Notes</p> <p>12 that are the subject of your second agreement</p> <p>13 with the Dugaboy trustee; is that right?</p> <p>14 A. Correct.</p> <p>15 Q. Can you identify the maker of any</p> <p>16 Notes that are the subject of your second</p> <p>17 agreement with the Dugaboy trustee?</p> <p>18 A. No, I – I – no, I don't remember.</p> <p>19 Q. Okay. So as you sit here right now,</p> <p>20 you can't identify the maker of any of the</p> <p>21 Notes that are the subject of the second</p> <p>22 agreement with the Dugaboy trustee; is that</p> <p>23 right?</p> <p>24 A. Well, it would be one of the three</p> <p>25 parties or four parties here, me or NexPoint or</p>
<p>Page 24</p> <p>1 JAMES DONDERO</p> <p>2 whatever; but I don't remember –</p> <p>3 Q. Okay.</p> <p>4 A. – off the top of my head.</p> <p>5 Q. Off the top of your head, can you</p> <p>6 tell me the original principal amount of any</p> <p>7 Note that's subject to your second agreement</p> <p>8 with the Dugaboy trustee?</p> <p>9 A. No. I just – no.</p> <p>10 Q. Can you identify the date on which</p> <p>11 any of the Promissory Notes were executed that</p> <p>12 were the subject of your second agreement with</p> <p>13 the Dugaboy trustee?</p> <p>14 A. No.</p> <p>15 Q. Can you tell me the aggregate</p> <p>16 principal amount of the Notes that are the</p> <p>17 subject of your second agreement with the</p> <p>18 Dugaboy trustee?</p> <p>19 A. Yes. A fraction of the prior year.</p> <p>20 Less than ten million.</p> <p>21 Q. Can you be anymore precise than</p> <p>22 that?</p> <p>23 A. Approximately ten million, I think.</p> <p>24 Just under.</p> <p>25 Q. Okay. Did you enter into your third</p>	<p>Page 25</p> <p>1 JAMES DONDERO</p> <p>2 agreement with the Dugaboy trustee in December</p> <p>3 2019 or early 2020?</p> <p>4 A. Yes.</p> <p>5 Q. That's after the petition date; do I</p> <p>6 have that right?</p> <p>7 A. I – yes.</p> <p>8 Q. Did you do it before or after</p> <p>9 January 9, 2020?</p> <p>10 A. Before, I believe.</p> <p>11 Q. So while you were still in control</p> <p>12 of Highland but after the petition date, you</p> <p>13 entered into your third agreement with the</p> <p>14 Dugaboy trustee concerning Promissory Notes.</p> <p>15 Do I have that right?</p> <p>16 A. Yes.</p> <p>17 Q. Did you ever inform the bankruptcy</p> <p>18 court of this agreement?</p> <p>19 A. No.</p> <p>20 Q. Did you ever inform the independent</p> <p>21 directors of this agreement that you entered</p> <p>22 into after the petition date?</p> <p>23 A. No.</p> <p>24 Q. Can you tell me which notes are the</p> <p>25 subject of your third agreement with the</p>

<p>Page 26</p> <p>1 JAMES DONDERO</p> <p>2 Dugaboy trustee?</p> <p>3 A. No.</p> <p>4 Q. Can you identify the maker on any</p> <p>5 Note that's the subject of your agreement that</p> <p>6 you entered into after the petition date with</p> <p>7 the Dugaboy trustee?</p> <p>8 A. Not off the top of my head.</p> <p>9 MS. DEITSCH-PEREZ: I mean, John, if</p> <p>10 you would let him look at his list, he</p> <p>11 could tell you.</p> <p>12 But if you insist on making this a</p> <p>13 memory test of 18 or so different things or</p> <p>14 however many there are, 13, 14, then this</p> <p>15 is – it's your deposition. But if you</p> <p>16 want more specific details, he could look</p> <p>17 at the list.</p> <p>18 MR. MORRIS: Okay. That's not even</p> <p>19 an objection let alone a speaking</p> <p>20 objection.</p> <p>21 It is my deposition –</p> <p>22 MS. DEITSCH-PEREZ: No.</p> <p>23 MR. MORRIS: It is my deposition,</p> <p>24 and I would appreciate your not making</p> <p>25 gratuitous comments.</p>	<p>Page 27</p> <p>1 JAMES DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Mr. Dondero, can you tell me the</p> <p>4 aggregate value of the Notes that are the</p> <p>5 subject of the third agreement that you entered</p> <p>6 into with the Dugaboy trustee after the</p> <p>7 petition date?</p> <p>8 A. I believe it was about a million</p> <p>9 bucks.</p> <p>10 Q. And who were the makers of the Notes</p> <p>11 that are the subject of the agreement with the</p> <p>12 Dugaboy trustee that you entered into after the</p> <p>13 petition date?</p> <p>14 A. I don't know.</p> <p>15 Q. Without the sheet that you looked at</p> <p>16 earlier, you have no ability to tell me which</p> <p>17 notes were the subject of which agreement that</p> <p>18 you entered into with the Dugaboy trustee,</p> <p>19 correct?</p> <p>20 MS. DEITSCH-PEREZ: Object to the</p> <p>21 form.</p> <p>22 THE WITNESS: If I'm not certain off</p> <p>23 the top of my head I can remember</p> <p>24 accurately, I don't want to speculate.</p> <p>25</p>
<p>Page 28</p> <p>1 JAMES DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. All right. I don't want you to</p> <p>4 speculate either. So I'm going to ask you just</p> <p>5 broad follow-up questions.</p> <p>6 Can you identify any Promissory Note</p> <p>7 that is the subject of any specific agreement</p> <p>8 that you ever entered into with the Dugaboy</p> <p>9 trustee without looking at the list?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form. He's already done that to some</p> <p>12 degree.</p> <p>13 THE WITNESS: I believe it covered</p> <p>14 virtually all of them. So I don't remember</p> <p>15 which ones specifically in each year.</p> <p>16 Generally, it was, I believe, the</p> <p>17 ones incurred in that year; but I don't</p> <p>18 remember which entities. But again, the</p> <p>19 ultimate result being that the term loans,</p> <p>20 the demand notes, the things incurred, the</p> <p>21 things outstanding were part of the</p> <p>22 agreement.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. Sir, you never wrote down a list of</p> <p>25 the notes that are the subject of the</p>	<p>Page 29</p> <p>1 JAMES DONDERO</p> <p>2 agreements, correct?</p> <p>3 A. Correct.</p> <p>4 Q. You never asked anybody to make a</p> <p>5 list of the notes that were the subject of each</p> <p>6 of the agreements, correct?</p> <p>7 A. Correct.</p> <p>8 Q. You're not aware of any document</p> <p>9 that was created prior to the commencement of</p> <p>10 these lawsuits that identifies the Notes that</p> <p>11 are the subject of the agreements, correct?</p> <p>12 A. Correct.</p> <p>13 Q. Other than the Promissory Notes that</p> <p>14 are the subject of this lawsuit – withdrawn.</p> <p>15 Other than the Promissory Notes that</p> <p>16 are the subject of these lawsuits, are you</p> <p>17 aware of any other doc- – Promissory Notes</p> <p>18 that are the subject of an agreement with the</p> <p>19 Dugaboy trustee?</p> <p>20 A. I believe there are from time to</p> <p>21 time, yes. But I – I don't know off the top</p> <p>22 of my head.</p> <p>23 Q. Can you identify the maker of any</p> <p>24 Promissory Note that is the subject of any</p> <p>25 agreement with the Dugaboy trustee other than</p>

<p>Page 30</p> <p>1 JAMES DONDERO</p> <p>2 the Promissory Notes that are the subject of</p> <p>3 the pending lawsuits?</p> <p>4 A. Not specifically, but I believe</p> <p>5 there are.</p> <p>6 Q. Okay. Can you identify the</p> <p>7 principal amount of any Promissory Note that is</p> <p>8 the subject of an agreement with the Dugaboy</p> <p>9 trustee that is not part of the pending</p> <p>10 lawsuits?</p> <p>11 A. Not specifically.</p> <p>12 Q. Can you tell me the year in which</p> <p>13 any Promissory Note was ever executed that is</p> <p>14 the subject of any agreement with the Dugaboy</p> <p>15 trustee other than the Promissory Notes that</p> <p>16 are the subject of the pending lawsuits?</p> <p>17 A. I believe there were several, and I</p> <p>18 believe there were numerous ones over the</p> <p>19 years.</p> <p>20 Q. Okay. And -- and are those</p> <p>21 Promissory Notes subject to one of the three</p> <p>22 agreements that we've identified or subject to</p> <p>23 some other agreement with the Dugaboy trustee?</p> <p>24 A. Well, they weren't to these related</p> <p>25 entities. I -- I don't know what the</p>	<p>Page 31</p> <p>1 JAMES DONDERO</p> <p>2 agreements were specifically subject to.</p> <p>3 Q. Are you the person who entered into</p> <p>4 the agreement with the Dugaboy trustee</p> <p>5 concerning the notes that you are describing</p> <p>6 right now?</p> <p>7 A. Yes, I guess.</p> <p>8 Q. As the person who entered into the</p> <p>9 agreement with the Dugaboy trustee concerning</p> <p>10 Notes that are not the subject of the pending</p> <p>11 litigation, can you identify anything about</p> <p>12 those Notes, whether it's the maker, the date,</p> <p>13 the principal amount, anything at all?</p> <p>14 A. Not off the top of my head.</p> <p>15 Q. Okay. What would -- what would you</p> <p>16 have to look at to know? The chart or</p> <p>17 something else?</p> <p>18 A. No, not this -- not this chart.</p> <p>19 This only has to do with what we thought this</p> <p>20 deposition was going to be about.</p> <p>21 It would be the financials of</p> <p>22 Dugaboy; and then from there, the detail</p> <p>23 regarding any Notes that it has.</p> <p>24 Q. Did you enter into an agreement with</p> <p>25 the Dugaboy trustee to forgive a Promissory</p>
<p>Page 32</p> <p>1 JAMES DONDERO</p> <p>2 Note where Dugaboy is the maker and Highland is</p> <p>3 the payee?</p> <p>4 A. Dugaboy -- can you repeat that</p> <p>5 question one more time?</p> <p>6 Q. Sure. Did you enter into an</p> <p>7 agreement with the Dugaboy trustee relating to</p> <p>8 any Promissory Note where Dugaboy is the maker?</p> <p>9 A. No, I don't believe so.</p> <p>10 Q. Okay. So you don't have any</p> <p>11 recollection of ever entering into an agreement</p> <p>12 with the Dugaboy trustee concerning the</p> <p>13 potential forgiveness of any Note that was made</p> <p>14 by Dugaboy, correct?</p> <p>15 A. I -- I do not believe so.</p> <p>16 Q. Okay. And is there a -- is there a</p> <p>17 document that we could look at that would</p> <p>18 refresh your recollection?</p> <p>19 A. Not beyond the financials of Dugaboy</p> <p>20 and any relevant Note detail.</p> <p>21 Q. And would -- is it -- is it your</p> <p>22 testimony that an agreement with Dugaboy would</p> <p>23 be reflected in the Dugaboy financial</p> <p>24 statements?</p> <p>25 A. No, but the Notes would be.</p>	<p>Page 33</p> <p>1 JAMES DONDERO</p> <p>2 Q. Well, the Dugaboy Notes are</p> <p>3 reflected in Highland's financial statements.</p> <p>4 Do you want me to get that?</p> <p>5 A. No. I didn't think that was -- I</p> <p>6 didn't think that was the question you were</p> <p>7 asking me.</p> <p>8 Q. I apologize. Maybe it was my fault.</p> <p>9 What would we have to look at in</p> <p>10 order to refresh your recollection as to</p> <p>11 whether or not you entered into an agreement</p> <p>12 with the Dugaboy trustee concerning the</p> <p>13 potential forgiveness of any Note made by</p> <p>14 Dugaboy?</p> <p>15 A. Other than the ones we're talking</p> <p>16 about today, right?</p> <p>17 Q. We're not talking about -- there's</p> <p>18 no Promissory Note where Dugaboy is the maker</p> <p>19 that is the subject of any of the pending</p> <p>20 lawsuits, correct?</p> <p>21 A. Correct.</p> <p>22 Q. So I'm asking you to identify if you</p> <p>23 can any Promissory Note that is the subject of</p> <p>24 any agreement you have ever entered into with</p> <p>25 the Dugaboy trustee that is not the subject of</p>

<p>Page 34</p> <p>1 JAMES DONDERO</p> <p>2 one of the pending lawsuits.</p> <p>3 Do you understand that that's what</p> <p>4 I'm trying to get at?</p> <p>5 MS. DEITSCH-PEREZ: Asked and</p> <p>6 answered.</p> <p>7 THE WITNESS: Yes.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. Okay. Can you identify any such</p> <p>10 Promissory Note?</p> <p>11 A. No, not specifically as I sit here</p> <p>12 today.</p> <p>13 Q. Okay. Other than the promissory –</p> <p>14 withdrawn.</p> <p>15 Are you familiar with the term</p> <p>16 "majority interest" as used in the Highland</p> <p>17 Limited Partnership Agreement?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Other than the Promissory</p> <p>20 Notes that are the subject of the pending</p> <p>21 lawsuits, are you aware of any other Promissory</p> <p>22 Notes that are the subject of any agreement</p> <p>23 with the majority interest?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form. Asked and answered.</p>	<p>Page 35</p> <p>1 JAMES DONDERO</p> <p>2 THE WITNESS: The majority interest</p> <p>3 is controlled by the 75 percent. It's</p> <p>4 controlled by Dugaboy. But the majority</p> <p>5 interest isn't an entity in and of itself,</p> <p>6 right?</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Okay. Has Dugaboy held the majority</p> <p>9 interest since the time that Highland was</p> <p>10 created?</p> <p>11 A. No.</p> <p>12 Q. Okay. So – so then I'm going to</p> <p>13 ask my question again.</p> <p>14 Are you aware of any agreement</p> <p>15 concerning any Promissory Note that is the</p> <p>16 subject – withdrawn.</p> <p>17 Are you aware of any agreement with</p> <p>18 the majority interest that concerns any</p> <p>19 Promissory Note where Highland is the payee</p> <p>20 other than the Notes that are the subject of</p> <p>21 the pending lawsuit?</p> <p>22 MS. DEITSCH-PEREZ: Asked and</p> <p>23 answered.</p> <p>24 THE WITNESS: Not specifically as I</p> <p>25 sit here today, but I do believe there have</p>
<p>Page 36</p> <p>1 JAMES DONDERO</p> <p>2 been numerous notes other than to these</p> <p>3 entities today where Dugaboy was the maker</p> <p>4 or recipient or whatever.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. So you do believe that Dugaboy was</p> <p>7 the maker of a Promissory Note that's subject</p> <p>8 to an agreement with the majority interest?</p> <p>9 MS. DEITSCH-PEREZ: Object to the</p> <p>10 form.</p> <p>11 THE WITNESS: What I'm saying is I</p> <p>12 believe Dugaboy had other – made other</p> <p>13 Notes and received other Notes from other</p> <p>14 entities other than Highland.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Does that have anything to do with</p> <p>17 Highland?</p> <p>18 Maybe I wasn't clear. I'm using the</p> <p>19 phrase "majority interest" as that phrase – I</p> <p>20 thought we had – I thought we had an</p> <p>21 understanding – as that phrase is used in the</p> <p>22 Highland Limited Partnership Agreement, right?</p> <p>23 A. I thought it was a definition term</p> <p>24 in the Highland, L.P.</p> <p>25 Q. It is, and I just – I'd like to</p>	<p>Page 37</p> <p>1 JAMES DONDERO</p> <p>2 move on if I can, but I just want some clarity</p> <p>3 here.</p> <p>4 Is there any agreement between</p> <p>5 Dugaboy and the majority interest concerning</p> <p>6 any Promissory Note where Dugaboy is the maker?</p> <p>7 MS. DEITSCH-PEREZ: Object to the</p> <p>8 form.</p> <p>9 THE WITNESS: I – I don't know what</p> <p>10 you're getting at. I have a tried to</p> <p>11 answer it the best I can several different</p> <p>12 ways.</p> <p>13 But try it one more time, and I'll</p> <p>14 try and answer it just specifically yes or</p> <p>15 no.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Okay. Is Dugaboy the maker on any</p> <p>18 Promissory Note where Highland is the payee?</p> <p>19 A. I don't believe so at this point.</p> <p>20 Q. Was Dugaboy ever the maker on a Note</p> <p>21 where Highland was the payee to the best of</p> <p>22 your knowledge?</p> <p>23 A. I don't – I just don't know what</p> <p>24 the actual accounting was or could have or</p> <p>25 should have been. But if it prepays a Note,</p>



<p>Page 38</p> <p>1 JAMES DONDERO</p> <p>2 instead of prepaying a Note, it could have left</p> <p>3 it in an existing Note outstanding and then</p> <p>4 issued a separate Note, right, instead of</p> <p>5 prepaying, right?</p> <p>6 So I don't know in the -- in the pas</p> <p>7 past or how exactly they handled prepays</p> <p>8 consistently over time. But at the moment, I</p> <p>9 don't believe there's a loan going from Dugaboy</p> <p>10 to Highland.</p> <p>11 But I do believe over the years,</p> <p>12 there were numerous loans from Dugaboy to other</p> <p>13 entities other than the ones we're talking</p> <p>14 about today.</p> <p>15 MS. DEITSCH-PEREZ: Okay. John,</p> <p>16 we've gone way far afield of the topics for</p> <p>17 this deposition or anything that you ought</p> <p>18 to be even asking this individual witness</p> <p>19 about given what these litigations are.</p> <p>20 Could we move on, please?</p> <p>21 MR. MORRIS: No. Other than --</p> <p>22 MS. DEITSCH-PEREZ: You're spending</p> <p>23 time on things other than the --</p> <p>24 MR. MORRIS: Please stop talking.</p> <p>25 MS. DEITSCH-PEREZ: -- action.</p>	<p>Page 39</p> <p>1 JAMES DONDERO</p> <p>2 MR. MORRIS: Please stop talking.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. Other than the Promissory Notes that</p> <p>5 are the subject of the lawsuits, are you aware</p> <p>6 of any other Promissory Notes that are the</p> <p>7 subject of any agreement that the Dugaboy</p> <p>8 trustee ever entered into as a representative</p> <p>9 of the majority of Class A shareholders?</p> <p>10 MS. DEITSCH-PEREZ: Asked and</p> <p>11 answered. I think we've answered after the</p> <p>12 sixth time.</p> <p>13 THE WITNESS: Not as I sit here</p> <p>14 today.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. In paragraph 82 in about the fifth</p> <p>17 line down, there's a statement that, quote,</p> <p>18 "Nancy Dondero is representative for a majority</p> <p>19 of the Class A holders of plaintiff, agree that</p> <p>20 plaintiff would forgive the Notes."</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. The word "plaintiff" as used in your</p> <p>24 answer refers to Highland Capital Management,</p> <p>25 L.P., correct?</p>
<p>Page 40</p> <p>1 JAMES DONDERO</p> <p>2 A. I -- no -- or wait. Hold on a</p> <p>3 second.</p> <p>4 Yes. I guess, yes.</p> <p>5 Q. Okay. At the time you entered into</p> <p>6 the agreements, did you understand that</p> <p>7 Dugaboy, as a majority -- as a representative</p> <p>8 of a majority of the Class A shareholders of</p> <p>9 the plaintiff was the entity that entered into</p> <p>10 the agreement on behalf of Highland?</p> <p>11 A. Yes.</p> <p>12 Q. And your sister Nancy is the trustee</p> <p>13 of Dugaboy today, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And Nancy was the trustee of Dugaboy</p> <p>16 at the time you entered into each of the</p> <p>17 agreements, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And you knew that at the time you</p> <p>20 entered each of the agreements, correct?</p> <p>21 A. Yes.</p> <p>22 Q. You knew she was acting on behalf of</p> <p>23 Dugaboy, correct?</p> <p>24 A. Yes.</p> <p>25 Q. Your understanding at that time that</p>	<p>Page 41</p> <p>1 JAMES DONDERO</p> <p>2 you entered into each of the agreements with</p> <p>3 the Dugaboy trustee was that Dugaboy held the</p> <p>4 majority of Highland's Class A interest,</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. And that's exactly why you contacted</p> <p>8 Nancy to discuss the topics that ultimately led</p> <p>9 to the agreements, correct?</p> <p>10 A. Yes.</p> <p>11 Q. You specifically called Nancy</p> <p>12 because you wanted her to cause Dugaboy to</p> <p>13 enter into the agreements with you on behalf of</p> <p>14 Highland, correct?</p> <p>15 A. Yes.</p> <p>16 Q. And just as you wanted, Nancy, in</p> <p>17 fact, caused Dugaboy, as a representative of a</p> <p>18 majority of the Class A shareholders of</p> <p>19 plaintiff, to enter into each of the</p> <p>20 agreements, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Would you agree with me that the</p> <p>23 Promissory Notes that are the subject of the</p> <p>24 agreements were the debtor's property?</p> <p>25 A. I think I've stated numerous times</p>

<p>Page 42</p> <p>1 JAMES DONDERO</p> <p>2 due to them as that they would ultimately be</p> <p>3 compensation; but to be a bona fide Note and to</p> <p>4 have bona fide deferral at the time that they</p> <p>5 were issued, they were the debtor's property.</p> <p>6 And I guess they remained such until satisfied</p> <p>7 or until the condition as present – the</p> <p>8 condition subsequent is either triggered or</p> <p>9 impossible to be triggered.</p> <p>10 Q. Okay. Is it fair to say that the</p> <p>11 Promissory Notes that are the subject of the</p> <p>12 agreements were assets of the debtor at the</p> <p>13 time you entered into the agreements?</p> <p>14 A. Yes.</p> <p>15 Q. At the time you entered into the</p> <p>16 agreements, you understood that Dugaboy was</p> <p>17 exercising control over the debtor's property,</p> <p>18 correct?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 MR. MORRIS: Withdrawn.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. At the time you entered into the</p> <p>24 agreements, you understood that the Dugaboy</p> <p>25 trustee was going to exercise control over the</p>	<p>Page 43</p> <p>1 JAMES DONDERO</p> <p>2 debtor's property, correct?</p> <p>3 MS. DEITSCH-PEREZ: Object. Object</p> <p>4 to the form.</p> <p>5 THE WITNESS: Exercise control? I</p> <p>6 understood the trustee had the ability to</p> <p>7 grant the, whatever you want to call them,</p> <p>8 conditions subsequent.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. On that –</p> <p>11 A. Yes.</p> <p>12 Q. And that was – by entering into the</p> <p>13 agreement, would you agree with me, that the</p> <p>14 Dugaboy trustee exercised control over the</p> <p>15 Promissory Notes?</p> <p>16 MS. DEITSCH-PEREZ: Object to the</p> <p>17 form.</p> <p>18 THE WITNESS: They – The trustee</p> <p>19 exercised the rights given to it as a</p> <p>20 majority of Class A holders.</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. Okay. And is it your understanding</p> <p>23 that as part of the right, it altered the</p> <p>24 characteristics of the Promissory Notes?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>
<p>Page 44</p> <p>1 JAMES DONDERO</p> <p>2 form.</p> <p>3 THE WITNESS: I just want to – I</p> <p>4 believe my testimony, I granted the</p> <p>5 conditions subsequent is my interpretation.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Right. And so that's fine. But</p> <p>8 that's – that's the thing that happened, but</p> <p>9 I'm just asking you what the impact of that</p> <p>10 was.</p> <p>11 When the Dugaboy trustee entered</p> <p>12 into the agreement, the result was that the</p> <p>13 terms and conditions of the Promissory Note</p> <p>14 were altered, correct?</p> <p>15 MS. DEITSCH-PEREZ: Object to the</p> <p>16 form.</p> <p>17 THE WITNESS: I don't want to – I</p> <p>18 want to say I don't know to that next week.</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. You can't – okay. You can't tell</p> <p>21 me if your agreement with the Dugaboy trustee</p> <p>22 altered the terms and conditions of the</p> <p>23 Promissory Notes that were subject to the</p> <p>24 agreement; you can't tell me that?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>	<p>Page 45</p> <p>1 JAMES DONDERO</p> <p>2 form.</p> <p>3 THE WITNESS: Yeah. I – again, it</p> <p>4 sounds like you're trying to take me</p> <p>5 towards legal terms of changing terms or</p> <p>6 modification in a Note or whatever; and</p> <p>7 I – I'm not – I don't have an opinion or</p> <p>8 the expert to comment on that.</p> <p>9 I can just say I knew she had the</p> <p>10 ability to create conditions subsequent.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Okay. So let's take, for example,</p> <p>13 the Notes that you signed.</p> <p>14 Those were demand notes, right?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And after you entered into</p> <p>17 the agreement with the Dugaboy trustee, instead</p> <p>18 of it being a demand note, it was now a demand</p> <p>19 note subject to conditions subsequent, correct?</p> <p>20 MS. DEITSCH-PEREZ: Object to the</p> <p>21 form.</p> <p>22 THE WITNESS: Yeah, that ultimately</p> <p>23 they couldn't be demanded until conditions</p> <p>24 subsequent were met or unable to be met.</p> <p>25</p>

<p>Page 46</p> <p>1 JAMES DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Okay. So can you agree with me that</p> <p>4 that -- that that was a change in the term of</p> <p>5 the Note?</p> <p>6 MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8 THE WITNESS: Yeah. See, that's the</p> <p>9 part I don't want to comment on. I just</p> <p>10 want to say I don't know.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Okay. Wasn't that the purpose of</p> <p>13 entering into the agreements was to change the</p> <p>14 terms of the each of the Promissory Notes?</p> <p>15 Wasn't that your intent?</p> <p>16 MS. DEITSCH-PEREZ: Object to the</p> <p>17 form.</p> <p>18 THE WITNESS: I'd say the intent was</p> <p>19 to find and make compensation appropriate</p> <p>20 for industry standards and Highland in</p> <p>21 particular.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. And did you believe that the Notes</p> <p>24 as originally drafted and signed by you or the</p> <p>25 representatives of the makers didn't take that</p>	<p>Page 47</p> <p>1 JAMES DONDERO</p> <p>2 into account?</p> <p>3 A. I went through this already last</p> <p>4 time, but the Notes were intentionally loose</p> <p>5 and, I think, anticipated the ability to adjust</p> <p>6 the subsequent conditions or other things.</p> <p>7 Q. Now, you told me that each of the</p> <p>8 agreements was entered into between December of</p> <p>9 one year or -- actually, withdrawn.</p> <p>10 If we look at paragraph 82, it says</p> <p>11 that each of the agreements was made, quote,</p> <p>12 "sometime between the December of the year in</p> <p>13 which each note was made and February of the</p> <p>14 following year."</p> <p>15 Do I have that right?</p> <p>16 A. Yes.</p> <p>17 Q. Can you identify with any greater</p> <p>18 specificity when you entered into the first</p> <p>19 agreement with the Dugaboy trustee referenced</p> <p>20 in paragraph 82?</p> <p>21 A. No.</p> <p>22 Q. It's sometime within that 90-day</p> <p>23 period; does that sound right to you?</p> <p>24 A. I believe it was closer to the</p> <p>25 holidays around the turn of the year, but I</p>
<p>Page 48</p> <p>1 JAMES DONDERO</p> <p>2 don't have specific recollection.</p> <p>3 Q. Is that answer the same for all</p> <p>4 three agreements or only for the first</p> <p>5 agreement?</p> <p>6 A. That would be the same for all</p> <p>7 three.</p> <p>8 Q. So then why -- why does paragraph 82</p> <p>9 refer to sometime between December of the year</p> <p>10 in which each note was made and February of the</p> <p>11 following year if your best recollection is</p> <p>12 that it happened around the holidays?</p> <p>13 A. I don't know.</p> <p>14 Q. All right. But as you sit here</p> <p>15 right now, is it your testimony that you</p> <p>16 believe each of the agreements was signed --</p> <p>17 was more likely signed in December rather than</p> <p>18 January or February?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 THE WITNESS: I think signed is a --</p> <p>22 I'm not -- I'm not testifying that signed,</p> <p>23 I guess.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. I apologize. Maybe that was my</p>	<p>Page 49</p> <p>1 JAMES DONDERO</p> <p>2 mistake.</p> <p>3 Is it your testimony that each --</p> <p>4 that you entered each of the agreements with</p> <p>5 the Dugaboy trustee in December rather than</p> <p>6 January or February of the years indicated?</p> <p>7 A. That's the best of my recollection,</p> <p>8 but there may have been one year that was</p> <p>9 towards the wider end of the interval. I can't</p> <p>10 remember with more specificity.</p> <p>11 Q. Okay. Do you know of anything that</p> <p>12 memorialized the date on which you entered into</p> <p>13 any of the agreements?</p> <p>14 A. No, other than -- no, other than --</p> <p>15 no, other than, you know, other than travel</p> <p>16 schedule or phone logs or whatever.</p> <p>17 Q. All right. During the discussion</p> <p>18 that led to the agreements, did you ever</p> <p>19 provide any information to Nancy or to Dugaboy</p> <p>20 concerning your compensation?</p> <p>21 A. Just -- just verbal. I mean, she</p> <p>22 knew it was low, and she knew we had reinvested</p> <p>23 most everything we made back in the company</p> <p>24 over the years. And that was the -- that was,</p> <p>25 I think, understanding by all involved; and it</p>

<p>Page 50</p> <p>1 JAMES DONDERO</p> <p>2 should be obvious to anybody who's looked at</p> <p>3 the numbers even in hindsight.</p> <p>4 MR. MORRIS: Okay. I move to</p> <p>5 strike.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. And please listen carefully to my</p> <p>8 question.</p> <p>9 During the discussions that led to</p> <p>10 each of the agreements, did you ever provide</p> <p>11 any information to your sister or Dugaboy</p> <p>12 concerning your compensation?</p> <p>13 MS. DEITSCH-PEREZ: Asked and</p> <p>14 answered.</p> <p>15 THE WITNESS: Not specifically.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Did you provide any general</p> <p>18 information to your sister or to Dugaboy prior</p> <p>19 to the entry of any of the three agreements</p> <p>20 that you entered into with the Dugaboy trustee?</p> <p>21 A. I would repeat the answer that was</p> <p>22 struck two questions ago.</p> <p>23 Q. That's the information that you gave</p> <p>24 to her?</p> <p>25 A. Yeah. It was -- again, it was</p>	<p>Page 51</p> <p>1 JAMES DONDERO</p> <p>2 verbal, and it was -- but an understanding but</p> <p>3 a clear and obvious understanding.</p> <p>4 Q. I want to know exactly what</p> <p>5 information you gave to your sister and to</p> <p>6 Dugaboy before entering into any of the three</p> <p>7 agreements with the Dugaboy trustee?</p> <p>8 A. Most of what I had made over the</p> <p>9 years was rolled back into the business to</p> <p>10 propel growth and initiatives. And that my</p> <p>11 actual compensation was very modest based on</p> <p>12 industry standards and relevant</p> <p>13 responsibilities at Highland.</p> <p>14 Q. Did you tell her anything else?</p> <p>15 Withdrawn.</p> <p>16 Did you tell your -- Nancy or</p> <p>17 Dugaboy anything else beyond what you've now</p> <p>18 testified to?</p> <p>19 A. You know, I think some of what I</p> <p>20 testified to earlier, that forgiveness of the</p> <p>21 Notes would be a modest increase in that</p> <p>22 compensation but still not be in the ZIP code</p> <p>23 of fair and appropriate compensation and that</p> <p>24 the value of the Notes in aggregate were de</p> <p>25 minimis relative to Highland and de minimis</p>
<p>Page 52</p> <p>1 JAMES DONDERO</p> <p>2 relative to Dugaboy.</p> <p>3 Q. Did you tell her anything else?</p> <p>4 A. Anything else would have fallen into</p> <p>5 the buckets I just described, but I can't</p> <p>6 remember specifically as I sit here today.</p> <p>7 Q. Did you ever tell your sister or</p> <p>8 Dugaboy that your salary was less than a</p> <p>9 million dollars?</p> <p>10 A. I --</p> <p>11 MS. DEITSCH-PEREZ: I mean, just</p> <p>12 from Highland?</p> <p>13 THE WITNESS: Repeat the question</p> <p>14 again for me, please.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Did you ever tell your sister that</p> <p>17 your salary was less than a million dollars a</p> <p>18 year?</p> <p>19 A. I know my sister was aware that it</p> <p>20 was very low, and it kind of decreased over</p> <p>21 time, and I think it was paid by different</p> <p>22 entities.</p> <p>23 Whether it was a million or</p> <p>24 2 million, I can't remember exactly what I</p> <p>25 would have told her; but it would have been in</p>	<p>Page 53</p> <p>1 JAMES DONDERO</p> <p>2 that ZIP code to paint the proper picture that</p> <p>3 the cash compensation for somebody in my role</p> <p>4 was well below industry standards.</p> <p>5 Q. Do you recall anything else that you</p> <p>6 shared with your sister concerning your</p> <p>7 compensation that you haven't testified to?</p> <p>8 A. Like I said, it would generally fall</p> <p>9 into those buckets as I sit here today.</p> <p>10 Q. Did your sister or Dugaboy ask you</p> <p>11 any questions about your compensation before</p> <p>12 entering into the three agreements that you</p> <p>13 entered into with the Dugaboy trustee?</p> <p>14 A. And, again, it would fall into the</p> <p>15 buckets I just described.</p> <p>16 Q. Can you -- can you recall any</p> <p>17 question that your sister or Dugaboy asked of</p> <p>18 you concerning your compensation before</p> <p>19 entering into the agreements?</p> <p>20 MS. DEITSCH-PEREZ: Asked answered.</p> <p>21 THE WITNESS: Again, I -- it would</p> <p>22 fall into the buckets I just described.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. Did you provide any documents to</p> <p>25 your sister or to Dugaboy concerning your</p>

<p>Page 54</p> <p>1 JAMES DONDERO</p> <p>2 compensation before entering into the</p> <p>3 agreements?</p> <p>4 A. No, not that I can recall.</p> <p>5 Q. Did your sister or Dugaboy ask you</p> <p>6 for any documents before entering into – into</p> <p>7 any of the agreements?</p> <p>8 A. I do not – I do not believe so.</p> <p>9 Q. Do you recall that in the ordinary</p> <p>10 course of business, Highland prepared a</p> <p>11 document called a Compensation and Benefits</p> <p>12 Statement for each of its employees?</p> <p>13 A. Yes.</p> <p>14 Q. And was that prepared by the Human</p> <p>15 Resources Group?</p> <p>16 A. Yes.</p> <p>17 Q. And was Mark Collins the head of the</p> <p>18 Human Resources Group?</p> <p>19 A. No.</p> <p>20 Q. Who was the head of the Human</p> <p>21 Resources Group?</p> <p>22 A. Brian Collins.</p> <p>23 Q. I apologize to Mr. Collins. Thank</p> <p>24 you for the correction.</p> <p>25 And Mr. Collins and his team were</p>	<p>Page 55</p> <p>1 JAMES DONDERO</p> <p>2 responsible for preparing the annual</p> <p>3 Compensation and Benefits Statements for</p> <p>4 Highland's employees, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And did you instruct them to do</p> <p>7 that?</p> <p>8 A. Not specifically.</p> <p>9 Q. Okay.</p> <p>10 A. They do it every year. They do it</p> <p>11 every year as a matter of course, so I guess no</p> <p>12 is the answer.</p> <p>13 Q. Okay. So in the ordinary course of</p> <p>14 business, Mr. Collins and his team would</p> <p>15 prepare Compensation and Benefits Statements</p> <p>16 for each of Highland's employees on an annual</p> <p>17 basis, right?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 MR. MORRIS: Can we please put up</p> <p>21 Exhibit 68.</p> <p>22 MS. CANTY: (Complies with request.)</p> <p>23</p> <p>24</p> <p>25</p>
<p>Page 56</p> <p>1 JAMES DONDERO</p> <p>2 (Whereupon, Exhibit 68, James</p> <p>3 Dondero Compensation and Benefits</p> <p>4 Statement, Bates stamped D-CNL003585,</p> <p>5 marked for identification, as of this</p> <p>6 date.)</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Do you see the document that's been</p> <p>9 premarked as Exhibit 68 that's up on the</p> <p>10 screen, sir?</p> <p>11 A. Yup.</p> <p>12 Q. And does this appear to be the form</p> <p>13 of annual Compensation and Benefits Statement</p> <p>14 that Mr. Collins and his team prepared on an</p> <p>15 annual basis for Highland's employees?</p> <p>16 A. This looks like the format, yes.</p> <p>17 Q. Okay. And the Compensation and</p> <p>18 Benefits Statement was intended to set forth</p> <p>19 the types and the amounts of compensation each</p> <p>20 employee received each year, correct?</p> <p>21 A. Yes, generally.</p> <p>22 Q. Okay. Did you ever disclose any</p> <p>23 information on this page to Nancy or to</p> <p>24 Dugaboy?</p> <p>25 A. Honestly, I don't think I've ever</p>	<p>Page 57</p> <p>1 JAMES DONDERO</p> <p>2 seen my award letters before.</p> <p>3 Q. Okay. So you never – so then it's</p> <p>4 a fair to say you never showed this letter to</p> <p>5 your sister or to Dugaboy, correct?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. Did you ever disclose to</p> <p>8 Nancy or to Dugaboy the salary that's reflected</p> <p>9 on this document?</p> <p>10 A. I can't remember specifically beyond</p> <p>11 what I've already testified.</p> <p>12 Q. Did you ever describe for Nancy or</p> <p>13 for Dugaboy the 2016 deferred compensation</p> <p>14 award that's reflected on this document?</p> <p>15 A. No. I – by the way, I think that's</p> <p>16 only 20 percent vested a year. I think that's</p> <p>17 a gross amount. But no, I never – I never</p> <p>18 discussed that with her.</p> <p>19 Q. Okay. Do you see in the</p> <p>20 compensation award refers to 50,000 restricted</p> <p>21 stock units of NXRT relating to your 2016</p> <p>22 performance?</p> <p>23 A. Yes.</p> <p>24 Q. What is NXRT?</p> <p>25 A. That's the REIT that Highland used</p>



<p>Page 58</p> <p>1 JAMES DONDERO</p> <p>2 to own million shares of that series hold at 20</p> <p>3 that now trade at 70.</p> <p>4 Q. And is NexPoint REIT affiliated with</p> <p>5 NexPoint Advisors, L.P.?</p> <p>6 A. Yes.</p> <p>7 Q. And do you have an understanding of</p> <p>8 the nature of the relationship?</p> <p>9 A. Yes.</p> <p>10 Q. And what's -- what's your</p> <p>11 understanding of the nature of the relationship</p> <p>12 between NexPoint REIT and NexPoint Advisors,</p> <p>13 L.P.?</p> <p>14 A. It's the external manager of the</p> <p>15 REIT.</p> <p>16 Q. Okay. Did you ever tell Nancy or</p> <p>17 Dugaboy that you had received these restricted</p> <p>18 stock units in 2016?</p> <p>19 A. No. But again, the vested amount</p> <p>20 would have probably been about \$250,000 worth</p> <p>21 at that moment.</p> <p>22 Q. And did it vest over a couple of</p> <p>23 years?</p> <p>24 A. The first couple of years is vested</p> <p>25 over five years. I think now it vests over six</p>	<p>Page 59</p> <p>1 JAMES DONDERO</p> <p>2 or seven years. I don't remember whether the</p> <p>3 2016 award was five years, six years, or seven</p> <p>4 years.</p> <p>5 Q. Okay. We talked earlier about an</p> <p>6 expert that's been retained on your behalf.</p> <p>7 Do you remember that?</p> <p>8 A. Yes.</p> <p>9 Q. Do you recall if you or anybody</p> <p>10 acting on your behalf ever disclosed to that</p> <p>11 expert the restricted stock units reflected on</p> <p>12 this document?</p> <p>13 MS. DEITSCH-PEREZ: Object to the</p> <p>14 form.</p> <p>15 THE WITNESS: I don't know.</p> <p>16 MR. MORRIS: Let's put up</p> <p>17 Exhibit 50, please.</p> <p>18 MS. CANTY: (Complies with request.)</p> <p>19 (Whereupon, Exhibit 50, James</p> <p>20 Dondero Compensation and Benefits</p> <p>21 Statement, Bates stamped D-CNL003587,</p> <p>22 marked for identification, as of this</p> <p>23 date.)</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Do you see this is your benefits</p>
<p>Page 60</p> <p>1 JAMES DONDERO</p> <p>2 statement for 2017?</p> <p>3 A. Yes.</p> <p>4 Q. Did you ever disclose any of the</p> <p>5 information on this page to Nancy or to</p> <p>6 Dugaboy?</p> <p>7 A. No.</p> <p>8 Q. Did you ever disclose to Nancy or to</p> <p>9 Dugaboy that your base salary in 2017 was.</p> <p>10 2,500,024?</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 THE WITNESS: Not specifically, no,</p> <p>14 other than the buckets we talked about</p> <p>15 earlier.</p> <p>16 Like I said earlier, I'm not sure if</p> <p>17 I have ever seen these before. But I also</p> <p>18 -- until it's verified, I don't want to --</p> <p>19 everybody to assume that the base salary</p> <p>20 came a hundred percent from Highland or if</p> <p>21 it was also from some other entity.</p> <p>22 Because for the purposes of this letter,</p> <p>23 Brian Collins wouldn't have -- we have</p> <p>24 numerous or several employees that are dual</p> <p>25 employees. And whether their base salary</p>	<p>Page 61</p> <p>1 JAMES DONDERO</p> <p>2 came from one or multiple entities, he</p> <p>3 wouldn't have differentiated in that line.</p> <p>4 So I don't know whether that amount,</p> <p>5 that 2.5 million came from Highland or a</p> <p>6 combination of Highland/NexPoint or some</p> <p>7 other entities. I don't know.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. And who made the decision as to how</p> <p>10 to allocate the base salary?</p> <p>11 A. I don't know. I -- I mean, I don't</p> <p>12 know how it was split. But my recollection of</p> <p>13 my Highland base salary is that it was</p> <p>14 diminishing over time.</p> <p>15 Q. And -- and as the president of</p> <p>16 Highland and as the president of NexPoint, did</p> <p>17 you have any say as to how your salary was</p> <p>18 allocated between those two entities?</p> <p>19 A. Not that I recall.</p> <p>20 Q. Do you have any idea the basis on</p> <p>21 which your salary was allocated between those</p> <p>22 two entities?</p> <p>23 A. No.</p> <p>24 Q. Do you think -- do -- do you have</p> <p>25 any understanding that it was allocated based</p>

<p>Page 62</p> <p>1 JAMES DONDERO</p> <p>2 on the amount of time you spent working for</p> <p>3 each of those entities?</p> <p>4 A. I have no idea.</p> <p>5 Q. If your salary was \$500,000 from</p> <p>6 Highland in 2017 and \$2 million to NexPoint,</p> <p>7 can you – can you think of any reason why it</p> <p>8 would be allocated in that way?</p> <p>9 MS. DEITSCH-PEREZ: Object to the</p> <p>10 form.</p> <p>11 THE WITNESS: Cash, cash</p> <p>12 availability. I – I don't know.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. Okay. Did you devote your full time</p> <p>15 and attention to Highland Capital Management,</p> <p>16 L.P.?</p> <p>17 A. I spread my time as appropriate</p> <p>18 across a variety of entities.</p> <p>19 Q. Can you identify for me the entities</p> <p>20 that you spread your time across?</p> <p>21 A. Highland, NexPoint, HCMFA, HCRE.</p> <p>22 Q. How about Highland Management</p> <p>23 Services, Inc.?</p> <p>24 A. Yes.</p> <p>25 Q. Are there any others?</p>	<p>Page 63</p> <p>1 JAMES DONDERO</p> <p>2 A. Yes.</p> <p>3 Q. Can you identify any other companies</p> <p>4 to which you devoted your time and attention?</p> <p>5 A. Not off the top of my head. I'm</p> <p>6 willing to be refreshed. But over the years</p> <p>7 there's been multiple initiatives at Highland</p> <p>8 that have come and gone and private equity</p> <p>9 companies that have come and gone and other</p> <p>10 initiatives that have come and gone.</p> <p>11 Q. Do you see the reference to the</p> <p>12 65,772 restricted stock units of the NexPoint</p> <p>13 REIT there on this document?</p> <p>14 A. Yes.</p> <p>15 Q. And was that, to the best of your</p> <p>16 recollection, the award that you were granted</p> <p>17 in connection with your 2017 performance?</p> <p>18 A. It would have been for – it would</p> <p>19 have been the prior awards at – it would have</p> <p>20 been for the prior years' awards at NFLP. And</p> <p>21 it would have been – it would have been the</p> <p>22 same five- or seven-year vesting schedule.</p> <p>23 MR. MORRIS: Now I'm looking at my</p> <p>24 phone, and I don't see, Deborah, any e-mail</p> <p>25 from your firm.</p>
<p>Page 64</p> <p>1 JAMES DONDERO</p> <p>2 MS. DEITSCH-PEREZ: Yeah. On a</p> <p>3 break, I'll take a picture of it and send</p> <p>4 it to you.</p> <p>5 Do you want a break now?</p> <p>6 MR. MORRIS: I really – I really</p> <p>7 don't. And I don't know why I can't get an</p> <p>8 e-mail copy rather than a photograph. It's</p> <p>9 not going to be – it's not going to be</p> <p>10 easy to read, and you know that?</p> <p>11 MS. DEITSCH-PEREZ: It'll be</p> <p>12 perfectly fine. If you can't, let me know;</p> <p>13 and then I'll take the time to try and find</p> <p>14 it. But the fastest way to get it to you</p> <p>15 is to take a picture of it.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Mr. Dondero, did you ever tell Nancy</p> <p>18 or Dugaboy that you had received the restricted</p> <p>19 stock units from the NexPoint REIT as reflected</p> <p>20 on this page?</p> <p>21 A. You're – you're saying the</p> <p>22 \$1.55-million number that was really 200,000</p> <p>23 vested or 300,000 vested?</p> <p>24 Q. No. I'm not talking about the</p> <p>25 value. I'm just talking about the restricted</p>	<p>Page 65</p> <p>1 JAMES DONDERO</p> <p>2 units.</p> <p>3 Did you ever tell them – let's keep</p> <p>4 it – let's keep it simple, and let's make it</p> <p>5 really broad.</p> <p>6 Did you ever tell Nancy or Dugaboy</p> <p>7 that you received restricted stock units as</p> <p>8 part of your compensation?</p> <p>9 A. I – I don't remember.</p> <p>10 Q. Okay. Did you ever – because this</p> <p>11 will speed it up.</p> <p>12 Did you ever tell your expert that</p> <p>13 you received restricted stock units as part of</p> <p>14 your compensation?</p> <p>15 MS. DEITSCH-PEREZ: Object to the</p> <p>16 form.</p> <p>17 THE WITNESS: I don't – I don't</p> <p>18 remember.</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. Did you ever direct anyone acting on</p> <p>21 your behalf to share with your expert that you</p> <p>22 had received restricted stock units as a form</p> <p>23 of compensation?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>

<p>Page 66</p> <p>1 JAMES DONDERO</p> <p>2 THE WITNESS: I not – I wasn't</p> <p>3 involved.</p> <p>4 MR. MORRIS: All right. You know,</p> <p>5 what, Deborah, let's take a break; and why</p> <p>6 don't you send me that document.</p> <p>7 It is now 3:28. Let's come back at</p> <p>8 3:40 Eastern, and let's please be on time</p> <p>9 because I'd like to try to finish this</p> <p>10 today. Thank you.</p> <p>11 THE VIDEOGRAPHER: Off the record at</p> <p>12 2:28.</p> <p>13 (Whereupon, a break was taken.)</p> <p>14 THE VIDEOGRAPHER: We are back on</p> <p>15 the record. The time is 2:43.</p> <p>16 MR. MORRIS: I received from counsel</p> <p>17 a photograph in text message form of the</p> <p>18 document that Mr. Dondero was referring to</p> <p>19 at the beginning of the deposition.</p> <p>20 I'm going to ask for that production</p> <p>21 – for the production of that document with</p> <p>22 a Bates number by the end of the day, and I</p> <p>23 hope that could be accommodated.</p> <p>24 MS. DEITSCH-PEREZ: I'm not sure –</p> <p>25 John, I'm not sure it will be by the end of</p>	<p>Page 67</p> <p>1 JAMES DONDERO</p> <p>2 the day because I don't know when the</p> <p>3 people who do the Bates stamping leave.</p> <p>4 But if it's not today, it will be tomorrow.</p> <p>5 MR. MORRIS: All right. It's 2:44</p> <p>6 in the afternoon your time. I hope that</p> <p>7 your firm has the capability of Bates</p> <p>8 stamping and producing one page before the</p> <p>9 close of business.</p> <p>10 MS. DEITSCH-PEREZ: Okay. But I'm</p> <p>11 not going to get – John, what difference</p> <p>12 does it make whether it's tonight or</p> <p>13 tomorrow?</p> <p>14 MR. MORRIS: You know what, I really</p> <p>15 want to use it in the deposition now, but I</p> <p>16 can't do that because – because you're not</p> <p>17 able – because you – because apparently,</p> <p>18 you can't even promise to do it by the end</p> <p>19 of the day.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. Mr. Dondero –</p> <p>22 MS. DEITSCH-PEREZ: Could you –</p> <p>23 could you use it –</p> <p>24 MR. MORRIS: I'd like to –</p> <p>25 MS. DEITSCH-PEREZ: – if I sent it</p>
<p>Page 68</p> <p>1 JAMES DONDERO</p> <p>2 to you by e-mail instead.</p> <p>3 MR. MORRIS: I'd like to proceed.</p> <p>4 You can e-mail it to me. I mean, I</p> <p>5 asked you to do that an hour ago.</p> <p>6 MS. DEITSCH-PEREZ: Well, the</p> <p>7 easiest way to do it is to send a picture</p> <p>8 is to text it; but if you give me a minute,</p> <p>9 I'll figure out how to send it by e-mail.</p> <p>10 Give me a second. Let's see.</p> <p>11 It just takes a second because it</p> <p>12 goes into my personal e-mail first if it's</p> <p>13 from my iPhone. Okay.</p> <p>14 MR. MORRIS: Can we proceed?</p> <p>15 MS. DEITSCH-PEREZ: Yeah. Give me a</p> <p>16 minute and you'll have it.</p> <p>17 Okay. You should have it in your</p> <p>18 e-mail now, John.</p> <p>19 MR. MORRIS: Thank you. All right.</p> <p>20 I'll let you know when it arrives.</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. Mr. Dondero, the questions now are</p> <p>23 going to be both in your individual capacity</p> <p>24 and in your capacity as the 30(b)(6) witness.</p> <p>25 Do you understand that?</p>	<p>Page 69</p> <p>1 JAMES DONDERO</p> <p>2 A. Okay.</p> <p>3 Q. Okay.</p> <p>4 A. It's either – it's either/or; it's</p> <p>5 not one?</p> <p>6 Q. No.</p> <p>7 A. Okay.</p> <p>8 Q. You contend that the Notes are</p> <p>9 subject to the – withdrawn.</p> <p>10 You contend that the Notes that are</p> <p>11 the subject of the agreements would be forgiven</p> <p>12 upon the fulfillment of certain conditions</p> <p>13 present, right?</p> <p>14 A. Right.</p> <p>15 MS. DEITSCH-PEREZ: Object to the</p> <p>16 form. He said "subsequent."</p> <p>17 MR. MORRIS: I apologize. Let me</p> <p>18 restate the question.</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. You contend that the Notes subject</p> <p>21 to the agreement should be forgiven or would be</p> <p>22 forgiven upon the fulfillment of certain</p> <p>23 conditions subsequent, correct?</p> <p>24 A. Yes.</p> <p>25 Q. And to the best of your knowledge,</p>

<p>Page 70</p> <p>1 JAMES DONDERO</p> <p>2 none of those conditions have occurred as of</p> <p>3 today, correct?</p> <p>4 A. To the best of my knowledge, yes.</p> <p>5 Q. Okay. You're not aware of any facts</p> <p>6 showing that any of the conditions subsequent</p> <p>7 have been satisfied, fair?</p> <p>8 A. I – yeah. I wouldn't know. You</p> <p>9 would probably know. I don't know.</p> <p>10 Q. I'm only asking for your knowledge.</p> <p>11 One of the conditions subsequent was</p> <p>12 that the Notes would be forgiven if you caused</p> <p>13 Highland to sell its interest in one of three</p> <p>14 portfolio companies above cost, right?</p> <p>15 MS. DEITSCH-PEREZ: Object to the</p> <p>16 form.</p> <p>17 THE WITNESS: I – yeah. I don't</p> <p>18 know if the noun is me or Highland, but</p> <p>19 yeah.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. Okay. The portfolio companies at</p> <p>22 issue were MGM, Comerstone, and Trustway,</p> <p>23 correct?</p> <p>24 A. Yes.</p> <p>25 Q. And prior to the petition date, you</p>	<p>Page 71</p> <p>1 JAMES DONDERO</p> <p>2 had the authority to sell any of those</p> <p>3 portfolio companies at any time without having</p> <p>4 to obtain approval from anyone, correct?</p> <p>5 MS. DEITSCH-PEREZ: Object to the</p> <p>6 form.</p> <p>7 THE WITNESS: Yeah. No, I can't</p> <p>8 agree with that statement.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. Why not?</p> <p>11 Who's approval did you have to get</p> <p>12 before you could sell any of those portfolio</p> <p>13 companies?</p> <p>14 A. MGM, I was one board member and I</p> <p>15 think an aggregate. When I was running</p> <p>16 Highland, we spoke for 18 percent of the</p> <p>17 equity. So I couldn't force the overall sale</p> <p>18 of the company unilaterally.</p> <p>19 There was also a shareholder's</p> <p>20 agreement in place that restricted myself and</p> <p>21 Anchorage and a couple of the large holders</p> <p>22 from selling their shares without a disclosure</p> <p>23 and approval process. That is one example.</p> <p>24 With regard to Trustway, I believe I</p> <p>25 was largely unfettered.</p>
<p>Page 72</p> <p>1 JAMES DONDERO</p> <p>2 With regard to Comerstone, a</p> <p>3 majority of it – or not a majority, but a</p> <p>4 significant minority, I think, was owned by</p> <p>5 both Restoration and the Old Redeemer Fund.</p> <p>6 Q. All right. Well, let me ask you</p> <p>7 this: The conditions subsequent that are</p> <p>8 embedded in the agreements, did that relate to</p> <p>9 just Highland's interests in the portfolio</p> <p>10 companies, or did it relate to interests held</p> <p>11 by anybody else?</p> <p>12 A. It referred to a monetization in</p> <p>13 creating liquidity around Highland's interests</p> <p>14 that were large and illiquid portions of</p> <p>15 Highland's balance sheet.</p> <p>16 Q. Okay. So let me ask the question</p> <p>17 again.</p> <p>18 Prior to the petition date, did you</p> <p>19 have the authority to sell Highland's interests</p> <p>20 in any of the portfolio companies without</p> <p>21 having to obtain the authority of anybody else?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form. Asked and answered.</p> <p>24 THE WITNESS: Sub- – subject to my</p> <p>25 prior answer, I could speak for Highland</p>	<p>Page 73</p> <p>1 JAMES DONDERO</p> <p>2 prior to the bankruptcy.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. Okay. Before entering into the</p> <p>5 agreements, did you or anybody acting on your</p> <p>6 behalf analyze the likelihood that any of the</p> <p>7 conditions subsequent would occur?</p> <p>8 A. Likelihood? Analyze? My</p> <p>9 description of them, which was my understanding</p> <p>10 of them, but my description of the assets to my</p> <p>11 sister was – to the trustee of Dugaboy was</p> <p>12 that we held them for a long time. We were</p> <p>13 working towards monetization, but there wasn't</p> <p>14 anything imminent regarding any of them in 2017</p> <p>15 or '18.</p> <p>16 Q. Well, but the actual sale is just</p> <p>17 one part of the condition subsequent, correct?</p> <p>18 The other part is that it's got to</p> <p>19 be sold above cost; is that correct?</p> <p>20 A. That is right.</p> <p>21 Q. Okay. So at the time you entered</p> <p>22 into each of your – each of the three</p> <p>23 agreements, had you done any analysis to</p> <p>24 determine whether or not any – whether</p> <p>25 Highland's interests in any of the portfolio</p>

<p>Page 74</p> <p>1 JAMES DONDERO</p> <p>2 companies exceeded its cost?</p> <p>3 A. No, but I – yes. No, I did not.</p> <p>4 Q. Did you have any understanding at</p> <p>5 all as to how the value of Highland's interests</p> <p>6 in MGM compared to its costs at the time you</p> <p>7 entered into each of these three agreements?</p> <p>8 A. No. I mean, my understanding was I</p> <p>9 knew they were substantially higher, but I</p> <p>10 didn't know how much higher.</p> <p>11 Q. Okay. So is it fair to say that the</p> <p>12 time – at the time you entered into each of</p> <p>13 these agreements, you knew and understood that</p> <p>14 the value of Highland's interests in MGM was</p> <p>15 substantially higher than its costs?</p> <p>16 A. For MGM, yes.</p> <p>17 Q. Okay. Did you have an understanding</p> <p>18 of the relationship between value and costs</p> <p>19 concerning Cornerstone at the time you entered</p> <p>20 into these agreements?</p> <p>21 A. My understanding it was moderately</p> <p>22 higher, and Trustway was between substantially</p> <p>23 and moderately and higher, I believe.</p> <p>24 Q. Okay. So is it fair to say that at</p> <p>25 the time you entered into each of these</p>	<p>Page 75</p> <p>1 JAMES DONDERO</p> <p>2 agreements, you believed that the value of</p> <p>3 Highland's interests in each of the portfolio</p> <p>4 companies exceeded its costs in varying</p> <p>5 degrees?</p> <p>6 A. Varying degrees. As a matter of</p> <p>7 fact, I would adjust. Cornerstone and</p> <p>8 Trustway, I believe, were moderately higher</p> <p>9 than their embedded costs or implied costs.</p> <p>10 That was my understanding.</p> <p>11 MGM was somewhat substantially. But</p> <p>12 all of them with a fair amount of volatility</p> <p>13 and a fair amount of illiquidity.</p> <p>14 Q. Did you ever give your sister or</p> <p>15 Dugaboy any information concerning how the</p> <p>16 value of Highland's interests in any of the</p> <p>17 portfolio companies compared to Highland's</p> <p>18 costs before entering into the agreements?</p> <p>19 A. Not that I recall.</p> <p>20 Q. Do you have any reason to believe</p> <p>21 that your sister or Dugaboy had any</p> <p>22 understanding as to the likelihood that the</p> <p>23 conditions subsequent would be satisfied at the</p> <p>24 time the Dugaboy trustee entered into the three</p> <p>25 agreements with you?</p>
<p>Page 76</p> <p>1 JAMES DONDERO</p> <p>2 MS. DEITSCH-PEREZ: Object to the</p> <p>3 form.</p> <p>4 THE WITNESS: I – I remember saying</p> <p>5 it would take a few years at minimum; but</p> <p>6 other than expressing time, I don't believe</p> <p>7 I expressed value versus cost or the</p> <p>8 questions you were asking me previously.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. Okay. You never showed Nancy or</p> <p>11 Dugaboy any of the Promissory Notes prior to</p> <p>12 entering into any of the agreements, correct?</p> <p>13 A. Not that I recall.</p> <p>14 Q. And you never sent copies of the</p> <p>15 Promissory Notes to Nancy or Dugaboy before</p> <p>16 entering into any of these agreements, correct?</p> <p>17 A. Not that I recall.</p> <p>18 MS. DEITSCH-PEREZ: Object to the</p> <p>19 form.</p> <p>20 John, you've asked these at the last</p> <p>21 deposition and actually also at the first</p> <p>22 day of the deposition.</p> <p>23 MR. MORRIS: Thank you. He's here</p> <p>24 now in his 30(b)(6) capacity. So please</p> <p>25 just stop.</p>	<p>Page 77</p> <p>1 JAMES DONDERO</p> <p>2 You can object to the form of the</p> <p>3 question. I really don't appreciate it.</p> <p>4 You should follow the very professional job</p> <p>5 that your colleague, Michael Aigen, did the</p> <p>6 other day.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Neither Nancy or Dugaboy has ever</p> <p>9 asked to see copies of any of the Promissory</p> <p>10 Notes before entering into any of the</p> <p>11 agreements, correct?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form.</p> <p>14 THE WITNESS: I don't know.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Do you have any reason to believe</p> <p>17 that Nancy or Dugaboy ever saw a copy of any of</p> <p>18 the Promissory Notes at issue before entering</p> <p>19 into the agreements?</p> <p>20 A. I don't know.</p> <p>21 Q. During your discussions with Nancy</p> <p>22 and Dugaboy, did you identify the Promissory</p> <p>23 Notes that were going to be the subject of each</p> <p>24 agreement?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>



<p>Page 78</p> <p>1 JAMES DONDERO</p> <p>2 form.</p> <p>3 You know, we made an agreement that</p> <p>4 you were going to refer to Nancy as the</p> <p>5 Dugaboy trustee. Please stick to it.</p> <p>6 Otherwise, I'm going to have to object each</p> <p>7 time, and I'd rather not.</p> <p>8 MR. MORRIS: I have no problem with</p> <p>9 your objecting to the form of the question.</p> <p>10 It's the speaking that I really do object</p> <p>11 to. And I don't know why you can't control</p> <p>12 yourself.</p> <p>13 MS. DEITSCH-PEREZ: Because I</p> <p>14 hope that –</p> <p>15 MR. MORRIS: Please stop. Please</p> <p>16 stop.</p> <p>17 MS. DEITSCH-PEREZ: – by telling</p> <p>18 you this, you will listen.</p> <p>19 MR. MORRIS: Okay. Your discussion</p> <p>20 and your inability to control yourself is</p> <p>21 going to cause this deposition to go longer</p> <p>22 than it needs to, okay?</p> <p>23 MS. DEITSCH-PEREZ: No. It's your</p> <p>24 repeating questions that's going to do</p> <p>25 that.</p>	<p>Page 79</p> <p>1 JAMES DONDERO</p> <p>2 MR. MORRIS: You let me know when</p> <p>3 you're done.</p> <p>4 MS. DEITSCH-PEREZ: I'm done.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. Mr. Dondero, during your discussions</p> <p>7 with the Dugaboy trustee, did you identify the</p> <p>8 Promissory Notes that were going to be the</p> <p>9 subject of each agreement?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 THE WITNESS: No, not that I recall.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. Do you recall – during your</p> <p>15 discussions with the Dugaboy trustee, did you</p> <p>16 identify the maker of any of the Notes that</p> <p>17 were the subject of any of the agreements?</p> <p>18 A. You mean Highland as the maker; is</p> <p>19 that what you're saying?</p> <p>20 Q. No. I'm just asking if during your</p> <p>21 discussions with the Dugaboy trustee, you ever</p> <p>22 disclosed the name of the maker of any of the</p> <p>23 Notes that were subject to the agreements?</p> <p>24 A. She – she knew they were Notes due</p> <p>25 to Highland from various entities. So I don't</p>
<p>Page 80</p> <p>1 JAMES DONDERO</p> <p>2 know what your question is. Did I identify</p> <p>3 specifically that they were Notes due to</p> <p>4 Highland? I guess the answer to that is yes,</p> <p>5 but I don't know what you're asking me.</p> <p>6 Q. I'm sorry, sir. I'll take the</p> <p>7 responsibility for that.</p> <p>8 I'm asking you if you identified who</p> <p>9 the maker of the Notes were, not who the payee</p> <p>10 was.</p> <p>11 MS. DEITSCH-PEREZ: You mean the</p> <p>12 borrowers, John?</p> <p>13 THE WITNESS: See, I don't want to</p> <p>14 get stuck in my underwear on maker/borrower</p> <p>15 nomenclature.</p> <p>16 She was aware that they were notes</p> <p>17 due to Highland from a variety of entities.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. Okay. Did you identify any of those</p> <p>20 entities?</p> <p>21 A. I – yeah. She knew that some were</p> <p>22 Dugaboy, some were NexPoint for sure, and some</p> <p>23 were other entities.</p> <p>24 Q. So – so there were notes where</p> <p>25 Dugaboy owed the money or was the obligor or</p>	<p>Page 81</p> <p>1 JAMES DONDERO</p> <p>2 was the borrower or was the maker that are</p> <p>3 subject to agreements that you entered into</p> <p>4 with the Dugaboy trustee?</p> <p>5 A. No. Wait. The Dugaboy – the</p> <p>6 Dugaboy Notes weren't subject to the</p> <p>7 forgiveness. It was the other notes that were</p> <p>8 subject to forgiveness.</p> <p>9 Q. So it's really kind of a simple</p> <p>10 question, and I'm not trying to trick you.</p> <p>11 If you think back to the</p> <p>12 conversations that you had with the Dugaboy</p> <p>13 trustee, did you identify the entity of – did</p> <p>14 you identify who the borrowers were under the</p> <p>15 Notes that were going to be subject to the</p> <p>16 agreements?</p> <p>17 A. She knew they were entities – she</p> <p>18 knew there were other related entities. She</p> <p>19 knew NexPoint for sure. She knew Services.</p> <p>20 I can't sit here as I remember – as</p> <p>21 I sit here today and remember whether or not I</p> <p>22 specifically identified HCRE or not, you know;</p> <p>23 but she knew they were related entities.</p> <p>24 Q. All of the revisions of the</p> <p>25 agreement are set forth in paragraph 82; is</p>

<p>Page 82</p> <p>1 JAMES DONDERO</p> <p>2 that right?</p> <p>3 We could put it back up on the</p> <p>4 screen if you'd like.</p> <p>5 MR. MORRIS: In fact, why don't we</p> <p>6 do that.</p> <p>7 MS. CANTY: I'm sorry, John. 51 –</p> <p>8 I mean, 50?</p> <p>9 MR. MORRIS: I think it's</p> <p>10 Exhibit 31, paragraph 82.</p> <p>11 MS. CANTY: Oh, okay, 82. I've got</p> <p>12 you.</p> <p>13 MR. MORRIS: Thank you.</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. Does – Mr. Dondero, other than</p> <p>16 specifying who the portfolio companies were,</p> <p>17 does paragraph 82 set forth all of the material</p> <p>18 terms of each of the agreements?</p> <p>19 A. I think it sets forth the conditions</p> <p>20 subsequent.</p> <p>21 Q. Is there any aspect of your</p> <p>22 agreement – withdrawn.</p> <p>23 Is there any aspect of your</p> <p>24 agreements with the Dugaboy trustees that's not</p> <p>25 described in this paragraph?</p>	<p>Page 83</p> <p>1 JAMES DONDERO</p> <p>2 A. I don't know if it's captured in</p> <p>3 there, but there was definitely a conversation,</p> <p>4 discussion that if something like MGM was</p> <p>5 sold – Anchorage is the largest holder almost</p> <p>6 a majority in and of themselves. And if it was</p> <p>7 bought or taken out at a price that we couldn't</p> <p>8 control or couldn't agree with and it was lower</p> <p>9 than cost or – you know, Cornerstone, again,</p> <p>10 had multiple funds between our ownership and</p> <p>11 control that if – if things were sold</p> <p>12 beyond – without my support but sold below</p> <p>13 cost – and I'm not sure that's captured in</p> <p>14 that paragraph, but I think that was part of</p> <p>15 the understanding, also.</p> <p>16 Q. Is there any other part of the</p> <p>17 understanding that's not set forth in</p> <p>18 paragraph 82, Mr. Dondero?</p> <p>19 A. Not that I can think of at this –</p> <p>20 let me read it one more time, please.</p> <p>21 Q. Take your time.</p> <p>22 A. I believe that generally covers it.</p> <p>23 Q. Was any provision of the agreements</p> <p>24 the subject of negotiation?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>
<p>Page 84</p> <p>1 JAMES DONDERO</p> <p>2 form.</p> <p>3 THE WITNESS: I don't believe it was</p> <p>4 materially adjusted by any negotiation. It</p> <p>5 was just clarified based on discussion is</p> <p>6 how I would describe it.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Is there any provision in the</p> <p>9 agreements that was included at your sis- – at</p> <p>10 the Dugaboy trustee's request?</p> <p>11 A. Like I said, there was discussion</p> <p>12 and clarification. Not specifically that I</p> <p>13 recall.</p> <p>14 Q. Okay. Did the Dugaboy trustee</p> <p>15 refuse to include any provision in the</p> <p>16 agreement that you had proposed?</p> <p>17 A. Not that I recall.</p> <p>18 Q. Can you identify any provision of</p> <p>19 the agreements that were the subject of a</p> <p>20 counterproposal that the Dugaboy trustee made?</p> <p>21 A. I remember clarification discussion</p> <p>22 around, you know, three companies versus two or</p> <p>23 one. I remember clarification of monetization</p> <p>24 being turned to cash versus illiquid.</p> <p>25 Yeah. I mean, I remember</p>	<p>Page 85</p> <p>1 JAMES DONDERO</p> <p>2 discussion – I remember clarification</p> <p>3 discussions like that, but I don't remember –</p> <p>4 it was a long time ago. I don't remember the</p> <p>5 details of anything specific like that.</p> <p>6 It wasn't – it wasn't a</p> <p>7 contentious, nor should it have been a</p> <p>8 contentious negotiation.</p> <p>9 Q. How long did – do you recall how</p> <p>10 long each of the conversations lasted that led</p> <p>11 to the entry of each of the three agreements?</p> <p>12 A. I remember the first one being</p> <p>13 longer than the second two, and then I remember</p> <p>14 it being spread out periods of time. So I</p> <p>15 can't – I can't – I can't put an exact</p> <p>16 estimate on it.</p> <p>17 Q. Okay. I'm going to shift gears.</p> <p>18 MR. MORRIS: We can take that down</p> <p>19 now, please.</p> <p>20 MS. CANTY: (Complies with request.)</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. Do you know of any written agreement</p> <p>23 pursuant to which HCRE provided services to</p> <p>24 Highland at any time?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>

<p>Page 86</p> <p>1 JAMES DONDERO</p> <p>2 form. Asked and answered.</p> <p>3 THE WITNESS: HCRE provided</p> <p>4 preferred services to. Well, the</p> <p>5 participants there in HCRE are, my –</p> <p>6 myself and McGraner. And, you know, we</p> <p>7 both provided significant other services to</p> <p>8 Highland.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. Okay. Is that in writing? Is there</p> <p>11 a written agreement?</p> <p>12 That was my question.</p> <p>13 Is there a written agreement</p> <p>14 pursuant to which HCRE ever provided services</p> <p>15 to Highland?</p> <p>16 A. I don't believe so.</p> <p>17 Q. Did HCRE ever provide services to</p> <p>18 Highland?</p> <p>19 A. I would incorporate my last two</p> <p>20 answers. Not under a written agreement, but I</p> <p>21 believe myself and McGraner provided a lot of</p> <p>22 services.</p> <p>23 Q. And what services did you and Mr.</p> <p>24 McGraner provide to Highland?</p> <p>25 A. I'd say anything real estate related</p>	<p>Page 87</p> <p>1 JAMES DONDERO</p> <p>2 on the Highland platform McGraner would have</p> <p>3 input into.</p> <p>4 And then I think my – my portfolio</p> <p>5 management, leadership role in Highland over</p> <p>6 time is well documented.</p> <p>7 Q. And how did you know if you were</p> <p>8 providing services in your capacity as the</p> <p>9 president of Highland or in your capacity as an</p> <p>10 officer or owner of the HCRE at the time you</p> <p>11 provided the services?</p> <p>12 A. Never – never really thought about</p> <p>13 parsing it that way.</p> <p>14 Q. I appreciate that.</p> <p>15 Do you know whether Highland Capital</p> <p>16 Management Services ever provided services to</p> <p>17 Highland?</p> <p>18 A. Yeah.</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form. Asked and answered.</p> <p>21 THE WITNESS: Yeah. I would – not</p> <p>22 in writing. I believe the services owners</p> <p>23 isn't myself and McGraner. I think it was</p> <p>24 myself and Okada.</p> <p>25 And I would say our portfolio and</p>
<p>Page 88</p> <p>1 JAMES DONDERO</p> <p>2 leadership contributions to Highland are</p> <p>3 well documented.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. And my question didn't have anything</p> <p>6 to do with any particular person. It's just</p> <p>7 simply whether Highland Capital Management</p> <p>8 Services ever provided any services to Highland</p> <p>9 Capital Management, L.P.</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 THE WITNESS: The entities that</p> <p>13 you're describing or you're asking</p> <p>14 questions about don't have employees'</p> <p>15 services in HCRE. They have ownership</p> <p>16 individuals that I've described.</p> <p>17 So I've tried the best I can to</p> <p>18 answer your question and what the ownership</p> <p>19 may have done for Highland.</p> <p>20 But since there's no employee base</p> <p>21 at either of those two companies, those</p> <p>22 companies could not have directly provided</p> <p>23 service to Highland other than, the last</p> <p>24 thing I would bring up is the track-record</p> <p>25 concept, you know, in terms of the</p>	<p>Page 89</p> <p>1 JAMES DONDERO</p> <p>2 performance of whatever assets are in some</p> <p>3 of those start-up entities ends up being a</p> <p>4 useful track record that then Highland can</p> <p>5 market.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Okay. How about NexPoint, did</p> <p>8 NexPoint ever provide services to Highland</p> <p>9 Capital Management, L.P.?</p> <p>10 A. Yes. The real estate – yes. I</p> <p>11 mean, can I just say yes or –</p> <p>12 Q. You could. That would be really</p> <p>13 helpful.</p> <p>14 A. Okay. There we go.</p> <p>15 Q. Can you describe the circumstances</p> <p>16 for me?</p> <p>17 MS. DEITSCH-PEREZ: Finally, some</p> <p>18 accord between the witness and the</p> <p>19 questioner.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. Can you describe the services for</p> <p>22 me?</p> <p>23 A. NexPoint has a couple of attorneys</p> <p>24 that are real estate experts. We have a lot of</p> <p>25 different attorneys, or we did at Highland.</p>

<p>Page 90</p> <p>1 JAMES DONDERO</p> <p>2 But prior to the bankruptcy, none of the</p> <p>3 Highland attorneys were experienced in real</p> <p>4 estate.</p> <p>5 So anything that required</p> <p>6 transaction help on the Highland platform</p> <p>7 regarding real estate, the NexPoint real estate</p> <p>8 attorneys would help with.</p> <p>9 Q. Okay. Anything else?</p> <p>10 A. I'm sure there are others. That's</p> <p>11 all I can think of off the top of my head. I</p> <p>12 just wanted to give you an example.</p> <p>13 Q. I appreciate that.</p> <p>14 You're aware that Highland has sued</p> <p>15 HCMFA to collect on two notes that were signed</p> <p>16 by Frank Waterhouse in 2019 in the aggregate</p> <p>17 amount of \$7.4 million; is that right?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And we actually went through</p> <p>20 this the other day, so I don't want to belabor</p> <p>21 it if I don't have.</p> <p>22 But do you recall that we saw the</p> <p>23 incumbency certificate which identified</p> <p>24 Mr. Waterhouse as the treasurer of HCMFA as of</p> <p>25 April 2019?</p>	<p>Page 91</p> <p>1 JAMES DONDERO</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And do you recall that you</p> <p>4 signed that incumbency certify in your capacity</p> <p>5 as president of HCMFA?</p> <p>6 MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8 THE WITNESS: Yes.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. I want to talk about the first of</p> <p>11 the two Notes, the \$2.4 million Note.</p> <p>12 Do you recall that in early May</p> <p>13 2019, Highland transferred \$2.4 million to</p> <p>14 HCMFA?</p> <p>15 A. I don't remember a lot of specifics,</p> <p>16 but I know there were two Notes as you're</p> <p>17 describing.</p> <p>18 Q. Okay. And there was -- and one of</p> <p>19 them -- did you authorize the \$2.4-million</p> <p>20 payment?</p> <p>21 A. Yes.</p> <p>22 Q. And why did you authorize Highland</p> <p>23 to transfer \$2.4 million to HCMFA in early May</p> <p>24 2019?</p> <p>25 A. My answer's the same for both --</p>
<p>Page 92</p> <p>1 JAMES DONDERO</p> <p>2 both Notes. Essentially, it's regarding the</p> <p>3 terrace start issue that we had with the</p> <p>4 Fort Worth SEC.</p> <p>5 Q. Did you give anyone instructions</p> <p>6 concerning the transfer of the \$2.4 million?</p> <p>7 A. I instructed them to make the</p> <p>8 transfer, or I was involved in the -- involved</p> <p>9 in approving the transfer.</p> <p>10 Q. And who did you instruct to make the</p> <p>11 transfer of \$2.4 million?</p> <p>12 A. Yeah. It would have been Frank.</p> <p>13 Q. Do you have a recollection of</p> <p>14 instructing Frank to transfer \$2.4 million?</p> <p>15 A. Yeah. Generally, yes.</p> <p>16 Q. Do you have a recollection of what</p> <p>17 instructions you gave him?</p> <p>18 A. It was well-known. It was a very</p> <p>19 disruptive -- the whole thing was very</p> <p>20 disruptive at Highland and HCMFA. Everybody</p> <p>21 was aware of it. The settlement, the</p> <p>22 negotiations around the settlement, the</p> <p>23 give-and-take, the amounts changed over time.</p> <p>24 Everybody was aware of it in senior</p> <p>25 management, including myself. And putting the</p>	<p>Page 93</p> <p>1 JAMES DONDERO</p> <p>2 money into HCMFA to settle it was something I</p> <p>3 was aware of and authorized and a critical</p> <p>4 piece of putting that issue to bed.</p> <p>5 Q. Okay. I'm just asking you if you</p> <p>6 recall what instructions you gave to</p> <p>7 Mr. Waterhouse concerning the transfer if you</p> <p>8 recall?</p> <p>9 A. No. I mean, like I said, I</p> <p>10 authorized the movement of the money.</p> <p>11 Q. Okay. Were you aware at that time</p> <p>12 that the transfer of the \$2.4 million from</p> <p>13 Highland to HCMFA was booked as a loan on both</p> <p>14 Highland and HCMFA's books and records?</p> <p>15 A. I was not aware at the time.</p> <p>16 Q. Okay.</p> <p>17 MR. MORRIS: Can we put up</p> <p>18 Exhibit 53 please.</p> <p>19 THE VIDEOGRAPHER: Counsel, I will</p> <p>20 need a media break in about five minutes.</p> <p>21 MR. MORRIS: Thank you very much.</p> <p>22 Why don't we take that right now before I</p> <p>23 begin my examination on this document. How</p> <p>24 long do you need?</p> <p>25 THE VIDEOGRAPHER: It will just be a</p>

<p>Page 94</p> <p>1 JAMES DONDERO</p> <p>2 minute, but this is the end of Media Number</p> <p>3 1.</p> <p>4 MR. MORRIS: Okay.</p> <p>5 THE VIDEOGRAPHER: We are off the</p> <p>6 record at 3:21.</p> <p>7 MR. MORRIS: We are off the record,</p> <p>8 but don't go anywhere.</p> <p>9 MS. DEITSCH-PEREZ: What?</p> <p>10 MR. MORRIS: We're not taking a</p> <p>11 break.</p> <p>12 THE VIDEOGRAPHER: Yep. This will</p> <p>13 just take a minute. Please stand by.</p> <p>14 MR. MORRIS: Thank you.</p> <p>15 THE VIDEOGRAPHER: All right.</p> <p>16 Suzanne, are you good to go?</p> <p>17 THE COURT REPORTER: I'm good.</p> <p>18 THE VIDEOGRAPHER: This is the</p> <p>19 beginning of Media Number 2, Volume II</p> <p>20 [sic] in the deposition of James Dondero.</p> <p>21 We are back on the record at 3:22.</p> <p>22 MR. MORRIS: All right. Can we</p> <p>23 please put up Exhibit 53.</p> <p>24 MS. CANTY: Yeah. Just one second.</p> <p>25 My computer went haywire. Give me one</p>	<p>Page 95</p> <p>1 JAMES DONDERO</p> <p>2 minute.</p> <p>3 (Whereupon, Exhibit 53, E-mail</p> <p>4 correspondence, Bates stamped D-CNL003768</p> <p>5 through D-CNL003770, marked for</p> <p>6 identification, as of this date.)</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Okay. So Mr. Dondero, do you see</p> <p>9 what's on the screen here?</p> <p>10 Mr. Dondero?</p> <p>11 MR. MORRIS: Deborah?</p> <p>12 Apparently Mr. Dondero has left the</p> <p>13 seat.</p> <p>14 THE VIDEOGRAPHER: Would you like to</p> <p>15 go off record?</p> <p>16 MR. MORRIS: No.</p> <p>17 THE VIDEOGRAPHER: Okay. We'll stay</p> <p>18 on the record.</p> <p>19 MR. MORRIS: The video is still</p> <p>20 rolling, right, sir?</p> <p>21 THE VIDEOGRAPHER: Yes, it is.</p> <p>22 MR. MORRIS: Thank you.</p> <p>23 Hi, Michael. If you're – if you're</p> <p>24 able, can you reach out to your partner?</p> <p>25 MR. AIGEN: I had texted her. I</p>
<p>Page 96</p> <p>1 JAMES DONDERO</p> <p>2 will try to call her, too; but I did text</p> <p>3 her a couple of minutes ago. I will try to</p> <p>4 reach out again. Hold on.</p> <p>5 MS. DEITSCH-PEREZ: I'm back. I'm</p> <p>6 lucky in that the ladies room is directly</p> <p>7 across from the conference room.</p> <p>8 Mr. Dondero's down at the other end</p> <p>9 of the floor, so he will be back shortly.</p> <p>10 And I just saw your note, John. The</p> <p>11 – the videographer said he needed a break;</p> <p>12 and you said, okay, then let's take our</p> <p>13 break now. So we took a restroom break.</p> <p>14 MR. MORRIS: I think everybody on</p> <p>15 the phone – and there's a transcript of it</p> <p>16 – knows that I specifically said, how long</p> <p>17 do you need. He said one minute, and I</p> <p>18 said don't go anywhere.</p> <p>19 This is your time, not mine.</p> <p>20 MS. DEITSCH-PEREZ: Prior to that,</p> <p>21 you said, let's take the break now.</p> <p>22 MR. MORRIS: Yeah, to allow him to</p> <p>23 change the tape. I'm not going to question</p> <p>24 anybody on the call, but I'm 100 percent</p> <p>25 certain that they would all tell you – and</p>	<p>Page 97</p> <p>1 JAMES DONDERO</p> <p>2 the record will reflect, I specifically</p> <p>3 said do not leave.</p> <p>4 MS. DEITSCH-PEREZ: Okay.</p> <p>5 Mr. Dondero is back.</p> <p>6 You have to turn – turn the video</p> <p>7 on.</p> <p>8 THE WITNESS: I'm back.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. All right. Do you see on the screen</p> <p>11 there's a document that's been marked as</p> <p>12 Exhibit 53?</p> <p>13 A. Yup.</p> <p>14 Q. Do you see there's an e-mail string</p> <p>15 dated May 2, 2019?</p> <p>16 A. Yes.</p> <p>17 Q. And do you see that Mr. Waterhouse</p> <p>18 has – if you look at the second to the top,</p> <p>19 Mr. Waterhouse's e-mail is forwarding a</p> <p>20 spreadsheet to David Klos and Kristin Hendrix</p> <p>21 that he described as, quote, "The support for</p> <p>22 the payment to GAF by HCMFA?"</p> <p>23 A. Yes.</p> <p>24 Q. What's GAF?</p> <p>25 A. That's the fund itself that owned</p>



<p>Page 98</p> <p>1 JAMES DONDERO</p> <p>2 the TerreStar investment. The SEC wanted, I</p> <p>3 believe, some payment to go to them; but they</p> <p>4 all, meaning the SEC, and the SEC wanted some</p> <p>5 payment to go to the fund itself for the</p> <p>6 benefit of the investors.</p> <p>7 Q. Okay.</p> <p>8 MR. MORRIS: Can we can to the chart</p> <p>9 that's attached.</p> <p>10 MS. CANTY: (Complies with request.)</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Have you ever seen this chart</p> <p>13 before, sir?</p> <p>14 A. I don't believe so specifically, but</p> <p>15 I understand what it is.</p> <p>16 Q. And is it your understanding, based</p> <p>17 on this chart, that the loss to the fund was</p> <p>18 \$6,068,851?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 THE WITNESS: Yes.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. And there's -- there's a column</p> <p>24 there that's lost to fund.</p> <p>25 Do you see that?</p>	<p>Page 99</p> <p>1 JAMES DONDERO</p> <p>2 A. Yes.</p> <p>3 Q. And is it -- is it consistent with</p> <p>4 your recollection that the estimated loss of</p> <p>5 the fund or to the fund was approximately</p> <p>6 \$6 million?</p> <p>7 A. Yes. There is approximately --</p> <p>8 there's some other small numbers moving around,</p> <p>9 but yes.</p> <p>10 Q. Okay. And do you recall that HCMFA</p> <p>11 informed the SEC that HCMFA would make the fund</p> <p>12 whole by paying it an amount of money equal to</p> <p>13 the loss?</p> <p>14 A. Yes.</p> <p>15 Q. And, in fact, HCMFA paid the fund</p> <p>16 approximately \$6 million in connection with the</p> <p>17 losses sustained as a result of the NAV error,</p> <p>18 correct?</p> <p>19 A. I don't know details like that.</p> <p>20 Q. So you're not -- you're not aware of</p> <p>21 the fact that HCMFA paid to the fund</p> <p>22 approximately \$6 million in May of 2019?</p> <p>23 A. Approximately six or approximately</p> <p>24 seven. I -- I don't know. Whatever the</p> <p>25 agreement was with the SEC to be paid to them</p>
<p>Page 100</p> <p>1 JAMES DONDERO</p> <p>2 or to the fund or whatever, I -- I have all</p> <p>3 faith and confidence we complied with; but I</p> <p>4 don't -- I don't know the exact numbers. I'm</p> <p>5 not aware of the exact numbers.</p> <p>6 Q. Do you understand that this analysis</p> <p>7 shows how HCMFA was going to finance the</p> <p>8 payment to the fund as a result of the NAV</p> <p>9 error?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 THE WITNESS: I'm sorry. Could you</p> <p>13 repeat that question again?</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. Sure. Do you understand that</p> <p>16 this -- that this chart here sets forth the</p> <p>17 manner in which HCMFA is going to fund the</p> <p>18 payment that it was making to GAF on account of</p> <p>19 the NAV error?</p> <p>20 A. I would call it more of a</p> <p>21 calculation on where the amounts are coming</p> <p>22 from. It doesn't appear to me that this is a</p> <p>23 funding statement.</p> <p>24 Q. Okay. I appreciate that.</p> <p>25 So -- so your interpretation of this</p>	<p>Page 101</p> <p>1 JAMES DONDERO</p> <p>2 is that this shows the sources of money that</p> <p>3 were going to be used to make the payment; is</p> <p>4 that fair?</p> <p>5 MS. DEITSCH-PEREZ: Objection to the</p> <p>6 form.</p> <p>7 THE WITNESS: Yeah. I think it's a</p> <p>8 reconciliation between the insurance, some</p> <p>9 forgiveness of fees, and then additional</p> <p>10 monies that are necessary.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Okay. And --</p> <p>13 A. Yeah. Go ahead.</p> <p>14 Q. Did HCMFA file an insurance claim in</p> <p>15 connection with the NAV error?</p> <p>16 A. I believe they did get -- I believe</p> <p>17 they did, and I believe they did get paid some</p> <p>18 insurance.</p> <p>19 Q. And -- and if we look at the totals</p> <p>20 column in the right, did HCMFA receive, to the</p> <p>21 best of your recollection, approximately</p> <p>22 \$5 million from insurance?</p> <p>23 A. Yes. I think we should work -- I</p> <p>24 think we should work from that column --</p> <p>25 Q. Okay. So let's --</p>

<p>Page 102</p> <p>1 JAMES DONDERO</p> <p>2 A. – versus the other column, yeah.</p> <p>3 Q. I apologize, Mr. Dondero.</p> <p>4 So if we look at the last column,</p> <p>5 the total, does that comport with your</p> <p>6 recollection that HCMFA paid GAF approximately</p> <p>7 \$7.44 million in May of 2019 on account of the</p> <p>8 NAV error?</p> <p>9 A. I think it's more than that, and I</p> <p>10 think it's also the 375 below that.</p> <p>11 Q. Okay.</p> <p>12 A. And then I – yeah, definitely those</p> <p>13 two numbers in aggregate. I don't know if it's</p> <p>14 any others.</p> <p>15 Q. Okay. And did, to the best of your</p> <p>16 recollection, HCMFA make an insurance claim on</p> <p>17 which it received almost \$5 million as a source</p> <p>18 of funding for the payment that was due to GAF?</p> <p>19 A. Yes.</p> <p>20 Q. Are you familiar with that insurance</p> <p>21 claim?</p> <p>22 A. No.</p> <p>23 Q. Do you know if the insurance claim</p> <p>24 made any mention of Highland?</p> <p>25 A. I have no idea. I have no idea.</p>	<p>Page 103</p> <p>1 JAMES DONDERO</p> <p>2 Q. Okay. So as a – as a matter of</p> <p>3 rough math, would you agree with me that the</p> <p>4 insurance procedures funded approximately</p> <p>5 5 million of the \$7.8 million that was the</p> <p>6 total loss?</p> <p>7 MS. DEITSCH-PEREZ: Object to the</p> <p>8 form.</p> <p>9 THE WITNESS: This was the amount</p> <p>10 due to the investors. I – I – my rough</p> <p>11 recollection is there was another amount</p> <p>12 that was due the SEC, but I don't remember</p> <p>13 specifically.</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. Okay. And do you see in the middle</p> <p>16 of the page, there's a total additional payment</p> <p>17 from advisor of approximately \$2.4 million?</p> <p>18 A. Yes.</p> <p>19 Q. And is it your understanding that</p> <p>20 that is the amount that HCMFA had to come out</p> <p>21 of pocket in order to fully fund the GAF</p> <p>22 payment?</p> <p>23 A. Yes, but it's clear to me also that</p> <p>24 there's a forgiveness of management fees, also.</p> <p>25 Q. Okay. But is two point – but is</p>
<p>Page 104</p> <p>1 JAMES DONDERO</p> <p>2 \$2.4 million the amount of money that HCMFA</p> <p>3 needed in order to fully fund the payment to</p> <p>4 GAF?</p> <p>5 A. And I don't want to mince small</p> <p>6 numbers; but to the extent that they gave up</p> <p>7 their management fees also, like that 1939 or</p> <p>8 the 39 above that – and I don't know what that</p> <p>9 47 is above that – those are management fees</p> <p>10 that would have paid salaries and expenses at</p> <p>11 HCMFA also.</p> <p>12 So to the extent they gave up those</p> <p>13 items as part of the settlement, then HCMFA</p> <p>14 would have needed more money than even the 2.4</p> <p>15 that came from Highland.</p> <p>16 Q. Do you know if HCMFA ever informed</p> <p>17 the SEC that Highland was responsible for the</p> <p>18 NAV error?</p> <p>19 A. I – I don't know. We wouldn't have</p> <p>20 hidden it if they would have asked. My</p> <p>21 experience with the SEC is they identify the</p> <p>22 advisor; and who the advisor picks for vendors</p> <p>23 the advisor's responsible for.</p> <p>24 MR. MORRIS: I move to strike</p> <p>25 everything after "I don't know."</p>	<p>Page 105</p> <p>1 JAMES DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Did you ever direct anyone to inform</p> <p>4 the SEC that Highland was responsible for the</p> <p>5 NAV error?</p> <p>6 A. No, not that I recall.</p> <p>7 Q. Do you know if anybody acting on</p> <p>8 behalf of HCMFA ever informed the SEC that</p> <p>9 Highland was responsible for the NAV error?</p> <p>10 A. I don't know.</p> <p>11 Q. Do you know if HCMFA ever informed</p> <p>12 GAF that Highland was responsible for the NAV</p> <p>13 error?</p> <p>14 A. Yes.</p> <p>15 Q. And is that reflected in writing</p> <p>16 anywhere?</p> <p>17 A. Yes. Numerous places.</p> <p>18 Q. And what writing would that be</p> <p>19 reflected in?</p> <p>20 A. The board minutes. There were</p> <p>21 conversations every board meeting for over a</p> <p>22 year. The retail board represents GAF. They</p> <p>23 were well aware of the subadvisory agreements,</p> <p>24 and they were well aware that all the staff</p> <p>25 regarding valuation were housed at Highland;</p>

<p>Page 106</p> <p>1 JAMES DONDERO</p> <p>2 all the valuation activities were performed by</p> <p>3 Highland. And GAF and HCMFA relied on</p> <p>4 Highland, and it was a material part of board</p> <p>5 conversations for over a year.</p> <p>6 MR. MORRIS: Okay. I move to</p> <p>7 strike.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. I'm asking you just about writings,</p> <p>10 sir.</p> <p>11 Can you identify –</p> <p>12 A. No, no, no. I'm not – I'm not</p> <p>13 going to – I'm not going to allow that strike,</p> <p>14 or I'm not answering anymore questions.</p> <p>15 Q. Well, the judge will be the</p> <p>16 determiner of that. So I'd like you to answer</p> <p>17 my question.</p> <p>18 Is there any – I don't want to know</p> <p>19 about board meetings.</p> <p>20 Is there anything in writing that</p> <p>21 HCMFA provided to GAF that specifically stated</p> <p>22 that Highland and not HCMFA was responsible for</p> <p>23 the NAV error?</p> <p>24 MS. DEITSCH-PEREZ: Asked and</p> <p>25 answered.</p>	<p>Page 107</p> <p>1 JAMES DONDERO</p> <p>2 THE WITNESS: Yes. Numerous board</p> <p>3 minutes.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. Okay. And have those board minutes</p> <p>6 been produced in this litigation?</p> <p>7 A. I don't know.</p> <p>8 Q. Okay.</p> <p>9 MR. MORRIS: Let's go to the next</p> <p>10 exhibit, 54.</p> <p>11 MS. CANTY: (Complies with request.)</p> <p>12 (Whereupon, Exhibit 54, E-mail</p> <p>13 correspondence, Bates stamped D-CNL003777</p> <p>14 through D-CNL003779, marked for</p> <p>15 identification, as of this date.)</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Do you see that on the same day, at</p> <p>18 the bottom, Mr. Klos sent an e-mail to the</p> <p>19 Corporate Accounting Group?</p> <p>20 A. Yes.</p> <p>21 Q. And do you see that he instructed</p> <p>22 the Corporate Accounting Group to transfer</p> <p>23 \$2.4 million from HCMLT to HCMFA?</p> <p>24 A. Yes.</p> <p>25 Q. And do you see that he specifically</p>
<p>Page 108</p> <p>1 JAMES DONDERO</p> <p>2 informed the Corporate Accounting Group that</p> <p>3 this transaction was a, quote, "New inter</p> <p>4 co-loan?</p> <p>5 A. Yes.</p> <p>6 Q. Do you see that he asked</p> <p>7 Christian – Kristin or Hayley to prepare a</p> <p>8 Promissory Note for discussion?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Are you aware in May 2019,</p> <p>11 Frank Waterhouse was included in the e-mail</p> <p>12 string identified as Corporate Accounting?</p> <p>13 A. I do not have that awareness.</p> <p>14 Q. Okay. Do you see at the top</p> <p>15 Ms. Hendrix – Ms. Hendrix's response to</p> <p>16 Mr. Klos's e-mail and attaches a copy of a</p> <p>17 Promissory Note?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 MR. MORRIS: Can we just go to the</p> <p>21 attachment, please.</p> <p>22 MS. CANTY: (Complies with request.)</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. Do you see that that is a Promissory</p> <p>25 Note dated May 2, 2019, in the amount of</p>	<p>Page 109</p> <p>1 JAMES DONDERO</p> <p>2 \$2.4 million that where the maker is Highland</p> <p>3 Capital Management Fund Advisors, L.P.?</p> <p>4 A. Yeah.</p> <p>5 Q. Have you ever seen this before?</p> <p>6 A. I think in our last deposition.</p> <p>7 Q. Okay. Do you recall when you saw it</p> <p>8 for the first time?</p> <p>9 A. Our last deposition.</p> <p>10 Q. Do you recall when you learned about</p> <p>11 the existence of this document for the first</p> <p>12 time?</p> <p>13 A. I believe somehow regarding the</p> <p>14 litigation.</p> <p>15 Q. Okay. So you have no knowledge of</p> <p>16 this Promissory Note until after the litigation</p> <p>17 was commenced; do I have that right?</p> <p>18 A. Correct.</p> <p>19 Q. So you're not aware of Highland</p> <p>20 having made a demand for payment on this</p> <p>21 Promissory Note in December of 2020?</p> <p>22 A. Not that I recall.</p> <p>23 Q. Okay. Putting aside the question of</p> <p>24 the Promissory Note, do you recall when you</p> <p>25 first learned that the \$2.4 million that you</p>

<p>Page 110</p> <p>1 JAMES DONDERO</p> <p>2 instructed to be paid to HCMFA by Highland in</p> <p>3 May of 2019, do you recall when you first</p> <p>4 learned that that was booked as a loan?</p> <p>5 A. I believe just generally as part of</p> <p>6 this litigation, not before then.</p> <p>7 Q. Are you aware that the Corporate</p> <p>8 Accounting Group created a daily list of wire</p> <p>9 transfers that were being made on behalf of</p> <p>10 Highland and its affiliates?</p> <p>11 A. Not – no, not specifically.</p> <p>12 Q. Okay. So since you did not know</p> <p>13 that the \$2.4 million transfer had been booked</p> <p>14 as a loan, is it fair to say that you never</p> <p>15 told anybody prior to the commencement of this</p> <p>16 litigation that the transaction should not have</p> <p>17 been booked as a loan?</p> <p>18 A. I had no conversations either way</p> <p>19 prior to this litigation regarding the booking</p> <p>20 of the 2.4 million.</p> <p>21 Q. Did you ever take any steps to try</p> <p>22 to determine how Highland and HCMFA accounted</p> <p>23 for the \$2.4 million that you instructed to be</p> <p>24 transferred from Highland to HCMFA in early</p> <p>25 May 2019?</p>	<p>Page 111</p> <p>1 JAMES DONDERO</p> <p>2 A. No.</p> <p>3 Q. Did you rely on Mr. Waterhouse to</p> <p>4 oversee that?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And you did so because he</p> <p>7 held not only the CFO title at Highland, but he</p> <p>8 also held the treasurer title at HCMFA,</p> <p>9 correct?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 THE WITNESS: I relied on him</p> <p>13 because generally the accounting function</p> <p>14 across the organization reported up through</p> <p>15 him.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Let's talk about the \$5 million</p> <p>18 Note.</p> <p>19 Do you recall that in early</p> <p>20 May 2019, in fact, the next day, May 3rd,</p> <p>21 Highland transferred \$5 million to HCMFA?</p> <p>22 A. I – I don't recall specifically.</p> <p>23 Q. Do you recall authorizing the</p> <p>24 transfer of \$5 million from Highland to HCMFA</p> <p>25 in early May 2019?</p>
<p>Page 112</p> <p>1 JAMES DONDERO</p> <p>2 A. Yes, generally.</p> <p>3 Q. Okay. Why did you authorize</p> <p>4 Highland to transfer \$5 million to HCMFA in</p> <p>5 early 2019?</p> <p>6 A. It was part of the overall</p> <p>7 resolution of the TerreStar situation.</p> <p>8 Q. Do you recall that HCMFA paid</p> <p>9 something called a consent fee equal to</p> <p>10 \$5 million in early May 2019?</p> <p>11 A. Well, like I said, I don't recall</p> <p>12 the exact amounts or the exact amounts net of</p> <p>13 insurance; but my recollection it was to</p> <p>14 resolve that.</p> <p>15 Q. Do you know – do you know – did –</p> <p>16 let's real simple.</p> <p>17 Did – did HCMFA pay a consent fee</p> <p>18 in May of 2019?</p> <p>19 A. I – I don't recall.</p> <p>20 Q. Do you know what a consent fee is?</p> <p>21 A. Yes.</p> <p>22 Q. What's a consent fee?</p> <p>23 A. It's a – a fee to encourage</p> <p>24 shareholder vote on something or shareholder</p> <p>25 restitution on something, typically.</p>	<p>Page 113</p> <p>1 JAMES DONDERO</p> <p>2 Q. And did – do you recall if HCMFA</p> <p>3 ever paid a consent fee in the year 2019?</p> <p>4 A. I don't recall.</p> <p>5 Q. Would Highland be responsible at all</p> <p>6 if HCMFA paid a consent fee?</p> <p>7 MS. DEITSCH-PEREZ: Object to the</p> <p>8 form.</p> <p>9 THE WITNESS: It could be. I</p> <p>10 don't – I don't know or remember the</p> <p>11 circumstances.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. Is the payment of a consent fee a</p> <p>14 voluntary decision by – by HCMFA? Is that</p> <p>15 something that –</p> <p>16 MS. DEITSCH-PEREZ: Object to the</p> <p>17 form.</p> <p>18 MR. MORRIS: Is that – withdrawn.</p> <p>19 That's fair.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. Is the payment of a consent fee</p> <p>22 required, or is that something that one can</p> <p>23 exercise discretion in whether or not to make?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>

<p>Page 114</p> <p>1 JAMES DONDERO</p> <p>2 THE WITNESS: My answer would be it</p> <p>3 depends.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. Do you recall whether Highland –</p> <p>6 withdrawn.</p> <p>7 Do you recall whether HCMFA was</p> <p>8 required to make – to make a – to pay a</p> <p>9 consent fee at any time in 2019?</p> <p>10 A. I don't recall.</p> <p>11 Q. Do you recall ever believing that</p> <p>12 HCMFA paid a consent fee because of something</p> <p>13 that – because of a mistake that Highland</p> <p>14 made?</p> <p>15 A. It could be. I don't know.</p> <p>16 Q. I'm just asking if you had a</p> <p>17 recollection?</p> <p>18 A. I don't have a recollection.</p> <p>19 Q. Okay.</p> <p>20 MR. MORRIS: To the videographer, I</p> <p>21 think Mr. Dondero's screen has frozen.</p> <p>22 MS. DEITSCH-PEREZ: John, your</p> <p>23 screen is frozen, too.</p> <p>24 MR. MORRIS: I'm –</p> <p>25 MS. DEITSCH-PEREZ: I'm also – hang</p>	<p>Page 115</p> <p>1 JAMES DONDERO</p> <p>2 on. I've lost contact. Give me a minute.</p> <p>3 THE VIDEOGRAPHER: Okay. I'd like</p> <p>4 us to go off record. Do you agree?</p> <p>5 MR. MORRIS: Yeah, but please don't</p> <p>6 leave.</p> <p>7 MS. DEITSCH-PEREZ: Yes, we agree.</p> <p>8 THE VIDEOGRAPHER: All right. Off</p> <p>9 the record at 3:53.</p> <p>10 (Discussion held off the record.)</p> <p>11 THE VIDEOGRAPHER: We are back on</p> <p>12 the record at 3:54.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. Okay. Can we put up – no. Before</p> <p>15 we do that, Mr. Dondero, can you hear me?</p> <p>16 We can't hear you. Are you on mute?</p> <p>17 Are you on mute? Can you speak?</p> <p>18 You're yelling at me now. Stop</p> <p>19 yelling at me.</p> <p>20 THE VIDEOGRAPHER: I'm seeing is</p> <p>21 that Mr. Dondero is on mute.</p> <p>22 (Interruption.)</p> <p>23 THE VIDEOGRAPHER: We've got – do</p> <p>24 you want to go off video record?</p> <p>25 MR. MORRIS: No.</p>
<p>Page 116</p> <p>1 JAMES DONDERO</p> <p>2 Can somebody help Mr. Dondero and</p> <p>3 get his audio feed fixed?</p> <p>4 Thank you, sir.</p> <p>5 MS. DEITSCH-PEREZ: Does this make a</p> <p>6 difference?</p> <p>7 MR. MORRIS: It sure does.</p> <p>8 THE WITNESS: Hello, hello.</p> <p>9 THE MORRIS: Thank you. All right.</p> <p>10 Let's try and – let's try and finish this</p> <p>11 up.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. Are you ready, sir?</p> <p>14 A. Yes.</p> <p>15 Q. Were you aware in May 2019 that the</p> <p>16 \$5-million transfer from Highland to HCMFA was</p> <p>17 booked as a loan?</p> <p>18 A. No.</p> <p>19 MR. MORRIS: Can we put up</p> <p>20 Exhibit 56, please.</p> <p>21 MS. CANTY: (Complies with request.)</p> <p>22 (Whereupon, Exhibit 56, E-mail</p> <p>23 correspondence, Bates stamped D-CNL003763,</p> <p>24 marked for identification, as of this</p> <p>25 date.)</p>	<p>Page 117</p> <p>1 JAMES DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. All right. Do you see that this is</p> <p>4 an e-mail from Ms. Hendrix to the Corporate</p> <p>5 Accounting Group on May 3, 2019?</p> <p>6 Do you see that, sir?</p> <p>7 A. Yes.</p> <p>8 Q. And do you see that Ms. Hendrix told</p> <p>9 corporate accounting to transfer \$5 million as</p> <p>10 a, quote, "new loan," close quote?</p> <p>11 A. Yes.</p> <p>12 Q. And did you see Ms. Hendrix also</p> <p>13 said that she would, quote, "paper the loan,"</p> <p>14 close quote?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. You're aware that from time</p> <p>17 to time, members of the Corporate Accounting</p> <p>18 Group used a template for a Promissory Note</p> <p>19 that had been previously prepared by counsel,</p> <p>20 correct?</p> <p>21 MS. DEITSCH-PEREZ: Object to the</p> <p>22 form.</p> <p>23 THE WITNESS: I – yeah. I'm aware</p> <p>24 they have a loan template, yes.</p> <p>25</p>



<p>Page 118</p> <p>1 JAMES DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Okay. Do you see there's a</p> <p>4 parenthetical in the first sentence that says,</p> <p>5 "(4.4M should be coming in from Jim soon)"?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know what that refers to?</p> <p>8 A. My – my educated – boy. My</p> <p>9 educated speculation is that Highland didn't</p> <p>10 have enough cash, so I probably put four into</p> <p>11 Highland for Highland to send to HCMFA. That's</p> <p>12 my educated guess; but otherwise, I don't know</p> <p>13 specifically.</p> <p>14 Q. And do you recall that you had taken</p> <p>15 out a loan from Highland earlier in the year,</p> <p>16 and this payment was credited against the</p> <p>17 principal and interest then due on that Note?</p> <p>18 A. I don't have specific awareness.</p> <p>19 That would make sense.</p> <p>20 Q. Okay.</p> <p>21 A. Versus – versus creating a new loan</p> <p>22 or something.</p> <p>23 Q. Okay.</p> <p>24 MR. MORRIS: Let's go to Exhibit 57,</p> <p>25 please.</p>	<p>Page 119</p> <p>1 JAMES DONDERO</p> <p>2 MS. CANTY: (Complies with request.)</p> <p>3 (Whereupon, Exhibit 57, Promissory</p> <p>4 Note, Bates stamped D-CNL003764 through</p> <p>5 D-CNL003765, marked for identification, as</p> <p>6 of this date.)</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. In fact, were you aware, sir, that</p> <p>9 in May 2019, you paid Highland exactly</p> <p>10 \$7.5 million?</p> <p>11 A. Not specifically, but it makes sense</p> <p>12 given the context we're discussing.</p> <p>13 Q. Okay. So the context that we're</p> <p>14 discussing was HCMFA needed \$7.5 million.</p> <p>15 Highland didn't have it. So that seven – you</p> <p>16 paid \$7.5 million to Highland, which was</p> <p>17 applied against your outstanding note. And</p> <p>18 then Highland transferred that money to HCMFA.</p> <p>19 Does that sound right to you?</p> <p>20 A. Generally, yes.</p> <p>21 Q. Okay. So now if we look at this</p> <p>22 note that's on the screen, do you see this is a</p> <p>23 Promissory Note for \$5 million dated May 3,</p> <p>24 2019?</p> <p>25 A. Yes.</p>
<p>Page 120</p> <p>1 JAMES DONDERO</p> <p>2 Q. And did you see this for the first</p> <p>3 time when I showed it to you late last week?</p> <p>4 A. Yes.</p> <p>5 Q. And did you learn about the loan</p> <p>6 from Highland to HCMFA for the first time after</p> <p>7 the litigation was commenced?</p> <p>8 A. That's the first time I remember.</p> <p>9 Q. And did you learn that Highland and</p> <p>10 HCMFA had booked the \$5-million transfer in May</p> <p>11 of 2019 as a loan for the first time after the</p> <p>12 litigation was commenced?</p> <p>13 A. That is my recollection.</p> <p>14 Q. Okay. We talked at your first</p> <p>15 deposition in May about Highland's audited</p> <p>16 financial statements.</p> <p>17 I don't know if you have a</p> <p>18 recollection of that. Do you?</p> <p>19 A. Just generally, yes.</p> <p>20 Q. Okay. I just want to focus on these</p> <p>21 two notes.</p> <p>22 For this portion of the deposition,</p> <p>23 we are questioning you in your individual</p> <p>24 capacity, and you're only focused on these two</p> <p>25 notes from HCMFA to Highland, okay?</p>	<p>Page 121</p> <p>1 JAMES DONDERO</p> <p>2 A. Okay.</p> <p>3 Q. Okay. When did you first learn that</p> <p>4 these notes were carried as assets on</p> <p>5 Highland's balance sheet?</p> <p>6 A. Like I said, I – my recollection is</p> <p>7 that as part of the bankruptcy and part of the</p> <p>8 litigation.</p> <p>9 Q. And so did you learn of it as part</p> <p>10 of the bankruptcy before the litigation was</p> <p>11 commenced, or did you learn that these notes</p> <p>12 were carried as assets after – only after the</p> <p>13 litigation was commenced?</p> <p>14 A. I believe only after. Especially,</p> <p>15 the specificity with regard to the notes, only</p> <p>16 after the litigation was commenced.</p> <p>17 Q. Okay. When did you learn for the</p> <p>18 first time that these notes were carried as</p> <p>19 liabilities on HCMFA's balance sheet?</p> <p>20 Withdrawn. No foundation.</p> <p>21 Are you aware that these notes have</p> <p>22 been carried as liabilities on HCMFA's balance</p> <p>23 sheet?</p> <p>24 A. I wasn't – I wasn't – I wasn't</p> <p>25 aware prior to the litigation.</p>

<p>Page 122</p> <p>1 JAMES DONDERO</p> <p>2 Q. Okay. Did you learn after the</p> <p>3 litigation that these notes had been carried as</p> <p>4 liabilities on HCMFA's balance sheets?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Did you ever review</p> <p>7 Highland's audited financial statements?</p> <p>8 A. Not with any specificity.</p> <p>9 Q. Are you aware that Highland gave</p> <p>10 these Promissory Notes to PWC as part of the</p> <p>11 audit process?</p> <p>12 A. I would assume they did, but I don't</p> <p>13 have specific awareness.</p> <p>14 Q. Okay. And why do you assume that</p> <p>15 they did?</p> <p>16 A. As part of complete financials to</p> <p>17 the extent that they were made by Kristin or</p> <p>18 whoever, properly or improperly. Once they</p> <p>19 existed, they would have been part of a</p> <p>20 complete audit.</p> <p>21 Q. Are you aware that these two</p> <p>22 Promissory Notes were disclosed in Highland's</p> <p>23 audited financial statements for the period</p> <p>24 ending December 31, 2018, as subsequent events?</p> <p>25 A. No.</p>	<p>Page 123</p> <p>1 JAMES DONDERO</p> <p>2 Q. Okay.</p> <p>3 MR. MORRIS: Can we put up</p> <p>4 Exhibit 34, please.</p> <p>5 MS. CANTY: (Complies with request.)</p> <p>6 (Whereupon, Exhibit 34, Highland</p> <p>7 Capital Management, L.P., Consolidated</p> <p>8 Financial Statements and Supplemental</p> <p>9 Information, dated December 31, 2018, Bates</p> <p>10 stamped D-CNL000212 through D-CNL000257,</p> <p>11 marked for identification, as of this</p> <p>12 date.)</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. And turn to – just if you can see,</p> <p>15 sir, the first page of this is the December 31,</p> <p>16 2018, financials.</p> <p>17 MR. MORRIS: And if we could go to</p> <p>18 the second or third page to see</p> <p>19 PricewaterhouseCoopers' signature.</p> <p>20 MS. CANTY: (Complies with request.)</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. And do you see that</p> <p>23 PricewaterhouseCoopers signed off on the audit</p> <p>24 on June 3, 2019?</p> <p>25 A. Yes.</p>
<p>Page 124</p> <p>1 JAMES DONDERO</p> <p>2 Q. Okay.</p> <p>3 MR. MORRIS: Can we go to page 252</p> <p>4 of the document? It's got to be – let's</p> <p>5 see the Bates.</p> <p>6 MS. CANTY: (Complies with request.)</p> <p>7 MR. MORRIS: Yeah. Right there.</p> <p>8 Okay. Scroll just to the page before so we</p> <p>9 can see the heading.</p> <p>10 MS. CANTY: (Complies with request.)</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Okay. Do you see that this is the</p> <p>13 section of the audited financials entitled</p> <p>14 "Subsequent Events"?</p> <p>15 A. Yes.</p> <p>16 Q. And is it your understanding that</p> <p>17 the auditors include in subsequent events</p> <p>18 material transactions THAT occur between the</p> <p>19 end of the fiscal period in which had audit has</p> <p>20 been conducted and the date that the auditors</p> <p>21 sign off?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. So if you look at page 39,</p> <p>24 the next to the last paragraph, do you see, it</p> <p>25 says, quote, "Over the course of 2019 through</p>	<p>Page 125</p> <p>1 JAMES DONDERO</p> <p>2 the report date, HCMFA issued Promissory Notes</p> <p>3 to the partnership in the aggregate amount of</p> <p>4 \$7.4 million?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And are you surprised to see</p> <p>7 that in the audit report?</p> <p>8 MS. DEITSCH-PEREZ: Object to the</p> <p>9 form.</p> <p>10 MR. MORRIS: Withdrawn.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Have you seen – have you seen this</p> <p>13 entry in the audit report before this moment?</p> <p>14 A. No.</p> <p>15 Q. Okay. Are you aware that Highland</p> <p>16 employees were responsible for drafting the</p> <p>17 audit report?</p> <p>18 A. Responsible for drafting the audit</p> <p>19 report? I don't know if that's a fair</p> <p>20 statement.</p> <p>21 I think they provide the detail; but</p> <p>22 my understanding, the audit report is a work</p> <p>23 product of the accounting firm. That's my</p> <p>24 understanding.</p> <p>25 Q. Was there a group within Highland</p>

<p>Page 126</p> <p>1 JAMES DONDERO</p> <p>2 that was responsible for working with the</p> <p>3 auditors in the preparation of the audit</p> <p>4 reports?</p> <p>5 A. Yeah, yes.</p> <p>6 Q. Do you know what group that was?</p> <p>7 A. I believe there's a financial</p> <p>8 reporting group that reports to Frank that</p> <p>9 handles this interaction.</p> <p>10 Q. Are you familiar – are you aware of</p> <p>11 what role Mr. Waterhouse plays, if any, in</p> <p>12 connection with Highland's annual audit, at</p> <p>13 least during the time that you were serving as</p> <p>14 president?</p> <p>15 A. I think he – he coordinates – I</p> <p>16 think he has to sign off on many aspects of it,</p> <p>17 you know, as a C suite executive. So he's</p> <p>18 responsible for, you know, completeness,</p> <p>19 integrity, et cetera.</p> <p>20 And there's a certain amount of</p> <p>21 reliance that PWC puts on it; but my</p> <p>22 understanding is audits for the last bunch of</p> <p>23 years has been pretty much a hundred percent</p> <p>24 sampling and verification.</p> <p>25 Q. High- –</p>	<p>Page 127</p> <p>1 JAMES DONDERO</p> <p>2 A. – PWC.</p> <p>3 Q. I apologize, sir.</p> <p>4 Highland was the sole source of</p> <p>5 information that's contained in its audit</p> <p>6 reports, right, to the best of your knowledge?</p> <p>7 A. No. No. When I – the last thing I</p> <p>8 said a minute ago about I believe it was a</p> <p>9 hundred percent sampling and verification, I</p> <p>10 think the audit firm ties back to vendors,</p> <p>11 credit agreements, source documents, et cetera.</p> <p>12 Highland is not the only source of</p> <p>13 this information.</p> <p>14 Q. You were also responsible for the</p> <p>15 audit report; is that fair?</p> <p>16 A. Yes.</p> <p>17 Q. And that's because you signed a</p> <p>18 management representation letter, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And do you have an understanding of</p> <p>21 what management a representation letter is?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form. I think you've asked this in each</p> <p>24 day of the deposition.</p> <p>25 MR. MORRIS: Okay. Just trying to</p>
<p>Page 128</p> <p>1 JAMES DONDERO</p> <p>2 get some background here.</p> <p>3 THE WITNESS: Yes, I have a general</p> <p>4 understanding. They very from accounting</p> <p>5 firm to accounting firm, and they very</p> <p>6 depending upon the type of audit. But I</p> <p>7 have a general understanding of them, yes.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. Okay. And you're – are you aware</p> <p>10 that HCMFA had its financial statements audited</p> <p>11 by PWC as well?</p> <p>12 A. Yes.</p> <p>13 Q. Are you aware that HCMFA disclosed</p> <p>14 the May 2019 Notes in its own audited financial</p> <p>15 statements?</p> <p>16 A. I assume so.</p> <p>17 Q. Have you ever –</p> <p>18 A. I don't have specific – I don't</p> <p>19 have specific awareness, but it's not reported</p> <p>20 here but not on HCMFA; so I assume they are,</p> <p>21 yes.</p> <p>22 Q. Okay. And do you sign Management</p> <p>23 Representation Letters for HCMFA's audit as you</p> <p>24 do for Highland?</p> <p>25 A. I believe so.</p>	<p>Page 129</p> <p>1 JAMES DONDERO</p> <p>2 Q. Have you ever told anyone that</p> <p>3 HCMFA's audited financial statements for the</p> <p>4 period ending December 31, 2018, inaccurately</p> <p>5 described the \$7.4 million transferred from</p> <p>6 Highland to HCMFA as loans?</p> <p>7 MS. DEITSCH-PEREZ: Object to the</p> <p>8 form.</p> <p>9 THE WITNESS: No, I have not; but I</p> <p>10 haven't been involved in any of the audit</p> <p>11 functions for quite some time.</p> <p>12 I don't think I was involved or</p> <p>13 signed Management Representation Letters</p> <p>14 for any period covered by this.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Okay. Let's switch gears.</p> <p>17 The advisors have annual contracts</p> <p>18 to manage certain retail funds, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And the retail funds have a board</p> <p>21 that decides whether to renew the contracts</p> <p>22 with the advisors, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And in connection with the annual</p> <p>25 renewal, the advisors provide information to</p>

<p>Page 130</p> <p>1 JAMES DONDERO</p> <p>2 the retail board, correct?</p> <p>3 A. Yes.</p> <p>4 Q. And you've participated in meetings</p> <p>5 with the retail board concerning the renewal</p> <p>6 process, correct?</p> <p>7 A. Sometimes.</p> <p>8 Q. Okay. Do you recall that in late</p> <p>9 2020, the advisors provided a written memo to</p> <p>10 the retail board in connection with the annual</p> <p>11 15-C review process?</p> <p>12 A. No.</p> <p>13 Q. Okay.</p> <p>14 MR. MORRIS: Can we put up</p> <p>15 Exhibit 59, please.</p> <p>16 MS. CANTY: (Complies with request.)</p> <p>17 (Whereupon, Exhibit 59, Memorandum,</p> <p>18 dated October 23, 2020, Bates stamped</p> <p>19 HCMFAS 000025 through HCMFAS 000031, marked</p> <p>20 for identification, as of this date.)</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. Do you see that this is a memo dated</p> <p>23 October 23, 2020?</p> <p>24 A. Yes.</p> <p>25 Q. Is it fair to describe this memo as</p>	<p>Page 131</p> <p>1 JAMES DONDERO</p> <p>2 a memo from the advisors to the retail boards</p> <p>3 concerning a supplemental 15-C information</p> <p>4 request?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. As always, Mr. Dondero, you</p> <p>7 can view any portion of this document. But if</p> <p>8 we could just scroll down a little bit, I just</p> <p>9 want to know --</p> <p>10 MS. DEITSCH-PEREZ: Do we have a</p> <p>11 copy of this document? Is it in your book?</p> <p>12 MR. MORRIS: No.</p> <p>13 MS. DEITSCH-PEREZ: Okay. Well,</p> <p>14 then he can't actually look at it. He's</p> <p>15 looking at what's on the screen.</p> <p>16 MR. MORRIS: Please.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. Mr. Dondero, do you understand what</p> <p>19 I meant?</p> <p>20 Will you let me know if there's any</p> <p>21 portion of the document you want to see?</p> <p>22 A. Sure. Can you -- can you just keep</p> <p>23 scrolling and let me see the next page?</p> <p>24 Q. Thank you, sir.</p> <p>25 MS. CANTY: (Complies with request.)</p>
<p>Page 132</p> <p>1 JAMES DONDERO</p> <p>2 THE WITNESS: Just stop there for a</p> <p>3 second.</p> <p>4 MS. CANTY: (Complies with request.)</p> <p>5 THE WITNESS: Okay. Keep going.</p> <p>6 MS. CANTY: (Complies with request.)</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Just -- I'm going to ask you</p> <p>9 questions about Section 2 just so you know, but</p> <p>10 you're welcome to view any portion of this</p> <p>11 document as you believe necessary.</p> <p>12 MS. CANTY: I also put it in the</p> <p>13 chat, John.</p> <p>14 MR. MORRIS: Thank you.</p> <p>15 THE WITNESS: I see it.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Okay. So --</p> <p>18 A. Can you go -- let's keep going.</p> <p>19 Just I'll quickly read the whole thing.</p> <p>20 Q. No problem.</p> <p>21 A. That's it. Okay. Got it. All</p> <p>22 right.</p> <p>23 Q. Okay. So now that you've seen the</p> <p>24 substance of the memo, do you recall if you saw</p> <p>25 it before today?</p>	<p>Page 133</p> <p>1 JAMES DONDERO</p> <p>2 A. I've never seen it before today.</p> <p>3 Q. Okay. So do you know who's</p> <p>4 responsible for preparing a memo of this type</p> <p>5 on behalf of the advisors?</p> <p>6 A. Let's go back to the front and see</p> <p>7 who it's from.</p> <p>8 Q. Sure.</p> <p>9 MS. CANTY: (Complies with request.)</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. Is that --</p> <p>12 A. Yeah. Now, I -- given what it is,</p> <p>13 it's something that, I'm sure, comes out of</p> <p>14 legal and compliance.</p> <p>15 Q. And does -- do the advisors have --</p> <p>16 withdrawn.</p> <p>17 Did the advisors have their own</p> <p>18 legal and compliance officers as of October 23,</p> <p>19 2020?</p> <p>20 A. No.</p> <p>21 Q. Did they have any -- did anybody</p> <p>22 serve as the advisors' general counsel as of</p> <p>23 October 23, 2020?</p> <p>24 A. My belief and recollection is the</p> <p>25 Shared Services Agreements provided the legal</p>

<p>Page 134</p> <p>1 JAMES DONDERO</p> <p>2 and accounting support for all the funds listed</p> <p>3 in the "to" section here.</p> <p>4 As I said earlier, NexPoint has a</p> <p>5 couple accountants – I mean – I'm sorry – a</p> <p>6 couple lawyers who do real estate transactions</p> <p>7 stuff. Their – their title – their title</p> <p>8 meaning DC's counsel, DC Sauter, who's the most</p> <p>9 senior attorney there, it might be general</p> <p>10 counsel; but he only does real estate</p> <p>11 transactions.</p> <p>12 The legal dependents of NexPoint and</p> <p>13 HCMFA was on the Shared Services Agreement and</p> <p>14 the Highland attorneys that performed those</p> <p>15 Shared Services Agreements.</p> <p>16 Q. Okay. Did anybody acting on behalf</p> <p>17 of the advisors review and approve this memo</p> <p>18 before it was sent to the retail funds?</p> <p>19 A. I don't know.</p> <p>20 Q. Is it your practice as the president</p> <p>21 of the advisors to have memos sent to the</p> <p>22 retail board without anybody reviewing and</p> <p>23 approving the memos on behalf of the advisors?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>	<p>Page 135</p> <p>1 JAMES DONDERO</p> <p>2 THE WITNESS: I'm not aware of what</p> <p>3 standard practice was or wasn't; but again,</p> <p>4 the infrastructure for something like this</p> <p>5 would have been only at Highland.</p> <p>6 HCMFA only had portfolio managers</p> <p>7 and analysts as employees, and NexPoint</p> <p>8 pretty much only had portfolio managers and</p> <p>9 analysts as employees.</p> <p>10 The staff functions were at</p> <p>11 Highland, and Highland serviced the funds</p> <p>12 via a Shared Services Agreement that was</p> <p>13 still in place as of the date of this memo.</p> <p>14 MR. MORRIS: Okay. Can we go down</p> <p>15 to Section 2, please.</p> <p>16 MS. CANTY: (Complies with request.)</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. Looking at Section 2, do you see</p> <p>19 that there's a question as to whether there are</p> <p>20 any material amounts currently payable or due</p> <p>21 in the future EG notes to –</p> <p>22 A. Yes.</p> <p>23 Q. – the Highland by HCMFA or</p> <p>24 NexPoint?</p> <p>25 A. Yes.</p>
<p>Page 136</p> <p>1 JAMES DONDERO</p> <p>2 Q. Okay. In the 53 or 54 weeks since</p> <p>3 this memo as was sent, do you know if it has</p> <p>4 been amended or modified in any way?</p> <p>5 A. I believe there was similar memos</p> <p>6 like this for this year's annual – for the</p> <p>7 2021 renewal, but I do not have – I've not</p> <p>8 seen those either; and I don't know how this</p> <p>9 answer would have changed.</p> <p>10 Q. Okay. But at least as of</p> <p>11 October 23, 2020, this is the response that the</p> <p>12 advisors gave to the retail board in response</p> <p>13 to Question Number 2, right?</p> <p>14 MS. DEITSCH-PEREZ: Object to the</p> <p>15 form.</p> <p>16 THE WITNESS: As far – as far as I</p> <p>17 know, having seen it here for the first</p> <p>18 time and not knowing whether this was the</p> <p>19 final or if there were subsequent letters</p> <p>20 and not knowing what the 2021 letter looks</p> <p>21 like, on its surface that appears so; but I</p> <p>22 have no awareness.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. Okay. And just I'll represent to</p> <p>25 you, Mr. Dondero, that I obtained this letter</p>	<p>Page 137</p> <p>1 JAMES DONDERO</p> <p>2 from counsel to the advisors in response to my</p> <p>3 specific request for the October 2020, 15-C</p> <p>4 response. So that's how – that's how I got it</p> <p>5 just so you know.</p> <p>6 A. Okay.</p> <p>7 Q. So – so were you aware in October</p> <p>8 of 2020 that NexPoint informed the retail board</p> <p>9 that as of June 30, 2020, it owed Highland and</p> <p>10 its affiliates approximately \$23.7 million?</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 THE WITNESS: I was not aware.</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. Does that amount comport with your</p> <p>16 recollection as to what was outstanding on the</p> <p>17 May 31, 2017, note that NexPoint gave to</p> <p>18 Highland?</p> <p>19 A. I don't have awareness.</p> <p>20 Q. Okay. Did NexPoint – do you know</p> <p>21 if NexPoint ever informed the retail board that</p> <p>22 any – any portion of that \$23.7 million was</p> <p>23 subject to any of the agreements that you</p> <p>24 entered into with the Dugaboy trustee?</p> <p>25 A. I – I don't know.</p>



<p>Page 138</p> <p>1 JAMES DONDERO</p> <p>2 Q. Did you ever instruct anybody on</p> <p>3 behalf of NexPoint to advise the retail board</p> <p>4 of the existence of the agreements?</p> <p>5 A. No, I do not believe so.</p> <p>6 Q. Do you know if anybody acting on</p> <p>7 behalf of NexPoint has ever informed the retail</p> <p>8 board that NexPoint's outstanding obligation</p> <p>9 was subject to the agreements that you entered</p> <p>10 into with the Dugaboy trustee?</p> <p>11 A. No.</p> <p>12 Q. Did you ever inform the retail</p> <p>13 boards that any portion of this \$23 million was</p> <p>14 subject to offset?</p> <p>15 A. You know what, I – let me answer</p> <p>16 that and let me also adjust the last five no</p> <p>17 answers I just rattled off.</p> <p>18 I'm thinking in the context of the</p> <p>19 time period of the date of this letter, which</p> <p>20 is October of 2020.</p> <p>21 Again, there would have been similar</p> <p>22 letters and disclosures like this and</p> <p>23 additional questions, initial requests for</p> <p>24 renewal, and then subsequent questions,</p> <p>25 probably multiple subsequent questions, given</p>	<p>Page 139</p> <p>1 JAMES DONDERO</p> <p>2 everything that's going on with the Highland</p> <p>3 bankruptcy in 2021.</p> <p>4 And I'm not aware of what those</p> <p>5 letters contain. I haven't seen those letters</p> <p>6 either, but those letters may include quite a</p> <p>7 bit of disclosure regarding the questions that</p> <p>8 you're asking me; but I don't know. But I</p> <p>9 didn't specifically instruct anybody to tell</p> <p>10 the board. I also didn't instruct anybody</p> <p>11 specifically to not tell the board.</p> <p>12 So I don't know what was told to the</p> <p>13 board for the period after October 2020.</p> <p>14 Q. Okay. I appreciate that, and I can</p> <p>15 only ask you what you know, right?</p> <p>16 And so what may or may not be in any</p> <p>17 other report is kind of irrelevant here because</p> <p>18 you haven't seen those reports, right?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. And so you have no basis of</p> <p>21 knowing one way or the other whether any report</p> <p>22 delivered to the retail board after October</p> <p>23 2020 – 2020 contains anything about the</p> <p>24 agreements that you entered into with the</p> <p>25 Dugaboy trustee, correct?</p>
<p>Page 140</p> <p>1 JAMES DONDERO</p> <p>2 A. Right. I just want to be clear that</p> <p>3 my answer's saying I did not specifically</p> <p>4 instruct somebody to tell them. It doesn't</p> <p>5 mean they don't know or someone else didn't</p> <p>6 tell them.</p> <p>7 Q. Okay.</p> <p>8 A. So that's – that's a clarification</p> <p>9 I want to make.</p> <p>10 Q. Okay. No problem.</p> <p>11 And then – and then do you see that</p> <p>12 there's a report to the retail board that HCMFA</p> <p>13 had approximately \$12.3 million outstanding to</p> <p>14 Highland as of June 30, 2020?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. So just the same type of</p> <p>17 questions.</p> <p>18 Do you have any knowledge as to how</p> <p>19 that number was calculated?</p> <p>20 A. No.</p> <p>21 Q. Do you know if it includes the</p> <p>22 \$7.4 million, which is the aggregate principal</p> <p>23 amount of the two notes that HCMFA issued to</p> <p>24 Highland in May of 2019?</p> <p>25 A. I don't specifically, but given</p>	<p>Page 141</p> <p>1 JAMES DONDERO</p> <p>2 everything we have gone over in the last – I</p> <p>3 don't know. Probably.</p> <p>4 Q. Okay. Do you know whether anybody</p> <p>5 has informed the retail board on behalf of</p> <p>6 HCMFA that that \$12.3 million was overstated by</p> <p>7 \$7.4 million?</p> <p>8 A. I – I don't know.</p> <p>9 Q. Okay. Do you know whether – do you</p> <p>10 know whether anybody acting behalf of HCMFA</p> <p>11 ever told the retail boards that the</p> <p>12 \$12.3 million was subject to offset of any</p> <p>13 kind?</p> <p>14 A. I don't know, but I can't imagine</p> <p>15 the October 21 letter didn't address some of</p> <p>16 those issues because those issues I'm not sure</p> <p>17 were known at this point in time.</p> <p>18 Q. Okay. If – and we can look at</p> <p>19 paragraph 1 if it helps.</p> <p>20 But my question is whether you're</p> <p>21 aware of anybody on behalf of HCMFA ever</p> <p>22 informing the retail board in 2020 that HCMFA</p> <p>23 had claims against Highland?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>

<p>Page 142</p> <p>1 JAMES DONDERO</p> <p>2 THE WITNESS: I don't know.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. Do you know whether anybody acting</p> <p>5 on behalf of either the advisors informed the</p> <p>6 retail board at any time in the year 2020 that</p> <p>7 either advisor had claims against Highland?</p> <p>8 MS. DEITSCH-PEREZ: Object to the</p> <p>9 form.</p> <p>10 THE WITNESS: I don't know.</p> <p>11 MR. MORRIS: Okay. We can take that</p> <p>12 down, please.</p> <p>13 MS. CANTY: (Complies with request.)</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. Are you aware that the Court</p> <p>16 confirmed the Debtor's Fifth Amended Complaint</p> <p>17 of Reorganization in February of 2021?</p> <p>18 A. Generally.</p> <p>19 Q. And do you recall that objections to</p> <p>20 the confirmation of the plan were filed by you</p> <p>21 and each of the advisors, among others?</p> <p>22 A. Yes.</p> <p>23 Q. And do you recall that these</p> <p>24 actions, these lawsuits to collect on the</p> <p>25 notes, they were commenced before the</p>	<p>Page 143</p> <p>1 JAMES DONDERO</p> <p>2 confirmation hearing, right?</p> <p>3 A. I – I don't – I don't know.</p> <p>4 Q. All right. I'll represent to you</p> <p>5 that the lawsuits were commenced on or about</p> <p>6 January 22, and the confirmation hearing took</p> <p>7 place, I think, on February 2 and February 3,</p> <p>8 2021.</p> <p>9 Does that refresh your recollection</p> <p>10 at all that the lawsuits were known to you at</p> <p>11 the time of confirmation?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form.</p> <p>14 THE WITNESS: Not specifically. I</p> <p>15 mean, given the details you just explained,</p> <p>16 I guess generally.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. Okay. I'd like to refer to you</p> <p>19 NexPoint and HCMFA and HCRE and Services</p> <p>20 collectively as the defendants for the next set</p> <p>21 of questions, okay?</p> <p>22 A. Okay.</p> <p>23 Q. And these questions are in your</p> <p>24 capacity as an individual and in your 30(b)(6)</p> <p>25 capacity, okay?</p>
<p>Page 144</p> <p>1 JAMES DONDERO</p> <p>2 Is that okay, sir?</p> <p>3 A. I'll do the best I can. If I – if</p> <p>4 I need clarity or caveats, I'll throw them out</p> <p>5 there.</p> <p>6 Q. Okay. Now, I do understand you're</p> <p>7 not a 30(b)(6) witness for HCMFA today. So</p> <p>8 let's make that clear.</p> <p>9 MS. DEITSCH-PEREZ: Thank you.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. As to HCMFA, you're just here in</p> <p>12 your individual capacity as the control person,</p> <p>13 okay?</p> <p>14 Prior to confirmation, do you know</p> <p>15 whether anyone acting on behalf of any of the</p> <p>16 defendants ever disclosed to the bankruptcy</p> <p>17 court the terms or the existence of your</p> <p>18 agreement – agreements with the Dugaboy</p> <p>19 trustee?</p> <p>20 A. I guess generally, I've testified to</p> <p>21 this already. There were numerous</p> <p>22 conversations with Seery, and I know Lynn had</p> <p>23 conversations.</p> <p>24 Q. Sir, I apologize, but I'm going to</p> <p>25 interrupt because I know you're tired; and I</p>	<p>Page 145</p> <p>1 JAMES DONDERO</p> <p>2 want to get this done. But my question had to</p> <p>3 do with the disclosure to the bankruptcy court,</p> <p>4 okay? Let me just try again.</p> <p>5 Are you aware, sir, whether any of</p> <p>6 the defendants disclosed to the bankruptcy</p> <p>7 court prior to confirmation the existence of</p> <p>8 the agreements that you entered into with the</p> <p>9 Dugaboy trustee?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form and to interrupting the witness.</p> <p>12 THE WITNESS: I'll say yes.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. Okay. Did you do that?</p> <p>15 A. Yes.</p> <p>16 Q. And did you do that as part of your</p> <p>17 testimony in the hearing, or did you do it</p> <p>18 through the filing of a pleading?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 THE WITNESS: I don't – I don't</p> <p>22 know about pleadings or filings. I – I</p> <p>23 don't know.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Do you recall what you told the</p>

<p>Page 146</p> <p>1 JAMES DONDERO</p> <p>2 bankruptcy court about the agreements that you</p> <p>3 entered into with the Dugaboy trustee?</p> <p>4 A. No. I'm not – yes. No. I'm</p> <p>5 not – no, I don't. I don't want to – I don't</p> <p>6 want to start talking and have you strike it or</p> <p>7 object. So I'll just answer specifically until</p> <p>8 you get to the question.</p> <p>9 Q. Yeah. So – so again, I'm not</p> <p>10 trying to trick you.</p> <p>11 Can you recall when you told the</p> <p>12 bankruptcy court that you had entered into will</p> <p>13 the agreements with the Dugaboy trustee?</p> <p>14 A. No.</p> <p>15 Q. Can you remember the subject matter</p> <p>16 of any hearing at which you informed the</p> <p>17 bankruptcy court about the existence of the</p> <p>18 agreements that you entered into with the</p> <p>19 Dugaboy trustee?</p> <p>20 A. I don't know where or how this works</p> <p>21 legally. But every written proposal we put</p> <p>22 forward as a solution and as a plot plan,</p> <p>23 always had a zero on all the affiliated notes</p> <p>24 as being a zero in something that was</p> <p>25 ultimately likely to be compensation.</p>	<p>Page 147</p> <p>1 JAMES DONDERO</p> <p>2 All of those settlement proposals,</p> <p>3 some were done formally through Seery; some</p> <p>4 were done indirectly; some of it were – some</p> <p>5 of them were done to the independent board;</p> <p>6 some of them were done directly to Clemente.</p> <p>7 But all of those documented the expectation</p> <p>8 that the notes were compensation.</p> <p>9 Q. Do you believe that any of the</p> <p>10 documents that you just described were ever</p> <p>11 presented to the bankruptcy court?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. When and in what context were</p> <p>14 those documents delivered to the bankruptcy</p> <p>15 court?</p> <p>16 A. I believed that the independent</p> <p>17 board and Seery were representatives of the</p> <p>18 bankruptcy court in that regard.</p> <p>19 So I think within a month, two</p> <p>20 months of the filing, there were proposals made</p> <p>21 to creditors directly and the independent</p> <p>22 board; and then subsequently, once Seery became</p> <p>23 president, to him.</p> <p>24 And then when Seery proved</p> <p>25 ineffective regarding settlements, there were</p>
<p>Page 148</p> <p>1 JAMES DONDERO</p> <p>2 reach outs – reaches out to creditors directly</p> <p>3 again and – to Clemente and the committee; but</p> <p>4 I think the committee already sold all their</p> <p>5 stuff by that point.</p> <p>6 I mean, I – listen, I – but I</p> <p>7 consider those reach-outs and characterizations</p> <p>8 of the notes as not part of settlement under</p> <p>9 the estate and that is likely to be</p> <p>10 compensation notifying the Court generally.</p> <p>11 Q. Okay. Are you aware of any notice</p> <p>12 that was ever given to Judge Jernigan about the</p> <p>13 existence of any of the agreements that you</p> <p>14 entered into with the Dugaboy trustee?</p> <p>15 A. I – I don't know.</p> <p>16 Q. Okay. You're not aware of any as</p> <p>17 you sit here right now; is that fair?</p> <p>18 A. Yes. I'm not aware if any of my</p> <p>19 reach-outs to the people that I described ever</p> <p>20 made it to Jernigan. I don't know.</p> <p>21 Q. Okay.</p> <p>22 A. I know she asked for updates on the</p> <p>23 plot plan. I know she asked for whatever, but</p> <p>24 I don't know what specificity any of the people</p> <p>25 I described presented them to her. So I don't</p>	<p>Page 149</p> <p>1 JAMES DONDERO</p> <p>2 know.</p> <p>3 Q. And I appreciate what you've said</p> <p>4 about the proposals that you've made. But my</p> <p>5 next question's very specific.</p> <p>6 Prior to the commencement of</p> <p>7 litigation, did you or anybody acting on your</p> <p>8 behalf ever tell Jim Seery or Matt Clemente of</p> <p>9 your agreements with the Dugaboy trustee?</p> <p>10 A. I – I don't know specifically.</p> <p>11 Q. Thank you very much.</p> <p>12 THE COURT REPORTER: I'm sorry.</p> <p>13 When you get to a good point, could we just</p> <p>14 take a quick break?</p> <p>15 MR. MORRIS: Yeah. Why don't we do</p> <p>16 that, and I hope to try to wrap up. So</p> <p>17 it's 5:37. I mean, I'm going to need</p> <p>18 probably, you know, another half hour or an</p> <p>19 hour; but I want to try to finish. It's</p> <p>20 5:38.</p> <p>21 I'm fine with if we just come back</p> <p>22 at 4:45 Central Time, seven minutes.</p> <p>23 THE VIDEOGRAPHER: All right. We're</p> <p>24 off record at 4:38.</p> <p>25 (Whereupon, a break was taken.)</p>

<p>Page 150</p> <p>1 JAMES DONDERO</p> <p>2 THE VIDEOGRAPHER: This is the</p> <p>3 beginning of Media Number 3 in the</p> <p>4 deposition of James Dondero. We are back</p> <p>5 on the record. The time is 4:45.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Just to finish up on the topic we</p> <p>8 were on when we took the break, Mr. Dondero.</p> <p>9 Prior to confirmation, do you know</p> <p>10 which of the defendants ever informed the</p> <p>11 bankruptcy court that any of the Promissory</p> <p>12 Notes that are the subject of the lawsuits were</p> <p>13 unenforceable for any reason?</p> <p>14 And when I use the phrase</p> <p>15 "bankruptcy court" here – you know what, let</p> <p>16 me ask a different question.</p> <p>17 Prior to confirmation, do you know</p> <p>18 if anybody acting on behalf of the defendants</p> <p>19 ever disclosed to Judge Jemigan that any of</p> <p>20 the Promissory Notes subject to the lawsuits</p> <p>21 were unenforceable for any reason?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form.</p> <p>24 THE WITNESS: I don't know.</p> <p>25</p>	<p>Page 151</p> <p>1 JAMES DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Prior to confirmation, did you</p> <p>4 direct anybody to inform Judge Jemigan that</p> <p>5 any of the Promissory Notes were unenforceable</p> <p>6 for any reason?</p> <p>7 A. I don't know.</p> <p>8 Q. Okay. I want to direct your</p> <p>9 attention to December 2020.</p> <p>10 Do you recall if you had a</p> <p>11 conversation with Frank Waterhouse concerning</p> <p>12 payments that were due to Highland by any of</p> <p>13 the companies that you directly or indirectly</p> <p>14 own or control?</p> <p>15 A. I'm trying to think. Generally, we</p> <p>16 overpaid on shared services, so – by a</p> <p>17 significant amount, I believe 14, 15 million</p> <p>18 bucks. And then there was a supposed to be an</p> <p>19 overall transition settlement true-up regarding</p> <p>20 the employees, the office space, you know,</p> <p>21 whatever.</p> <p>22 So the – yeah, that's – that's the</p> <p>23 – that's my general recollection.</p> <p>24 Q. But did you give Mr. Waterhouse any</p> <p>25 instructions as to whether to pay or not pay</p>
<p>Page 152</p> <p>1 JAMES DONDERO</p> <p>2 any amounts that were due and owing to Highland</p> <p>3 under any agreement between Highland and any</p> <p>4 affiliate?</p> <p>5 MS. DEITSCH-PEREZ: Object to the</p> <p>6 form.</p> <p>7 Are you asking about the Notes or</p> <p>8 the Shared Services Agreements?</p> <p>9 MR. MORRIS: I'm asking about – I'm</p> <p>10 asking very broadly any payments.</p> <p>11 THE WITNESS: I do remember having</p> <p>12 conversations not to pay any more shared</p> <p>13 services.</p> <p>14 And I hope there weren't anymore</p> <p>15 payments on shared services. There –</p> <p>16 There was never a specific to not pay the</p> <p>17 notes.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. So your recollection is that you</p> <p>20 instructed Mr. Waterhouse not to make any</p> <p>21 further payments under the shared services, and</p> <p>22 that's the instruction you gave?</p> <p>23 A. Yes.</p> <p>24 Q. Did you ever tell anybody in</p> <p>25 December of 2020 about your conversation with</p>	<p>Page 153</p> <p>1 JAMES DONDERO</p> <p>2 Mr. Waterhouse?</p> <p>3 A. Not that I recall.</p> <p>4 Q. Do you recall telling anybody other</p> <p>5 than Mr. Waterhouse in December 2020 that no</p> <p>6 payment should be made to Highland under the</p> <p>7 Shared Services Agreement?</p> <p>8 A. I do believe there was a team – I</p> <p>9 can't remember – I know Dustin Norris is on</p> <p>10 that team. He was aware. He was aware. And</p> <p>11 as a matter of fact, I think – yeah. He – I</p> <p>12 know he was aware for sure.</p> <p>13 Q. Anybody else?</p> <p>14 A. There were other people on that</p> <p>15 team, but I can't remember who was on that team</p> <p>16 or who was in the room at any time.</p> <p>17 Q. Is there anything in writing that</p> <p>18 you recall that reflects the instruction that</p> <p>19 you gave to Mr. Waterhouse in December 2020</p> <p>20 that we're talking about?</p> <p>21 A. I believe the back-and-forth and the</p> <p>22 true-up with Seery on the multiple of things</p> <p>23 that I was just discussing, you know, right to</p> <p>24 transition of people, it included no more</p> <p>25 shared services being paid and a credit for</p>

<p>Page 154</p> <p>1 JAMES DONDERO</p> <p>2 overpayment on shared services. And those –</p> <p>3 those spreadsheets went back and forth, and</p> <p>4 Seery has copies of them also.</p> <p>5 Q. Are you aware of any payments being</p> <p>6 made by the advisors to Highland after</p> <p>7 November 30, 2020?</p> <p>8 A. Hopefully not on shared services. I</p> <p>9 believe there were payments on principal and</p> <p>10 interest on notes.</p> <p>11 Q. Were any of those payments that you</p> <p>12 have in mind made before the end of calendar</p> <p>13 year 2020 – withdrawn.</p> <p>14 Were any of those payments that you</p> <p>15 have in mind made in December 2020?</p> <p>16 A. I don't know. I don't know which</p> <p>17 ones were paid and kept current. I don't know</p> <p>18 which ones were cured. I don't – I don't</p> <p>19 remember which ones were which.</p> <p>20 Q. Are you aware of any note that was</p> <p>21 tendered by one of Highland's affiliates on</p> <p>22 which payment was made in December 2020?</p> <p>23 A. I don't know. I don't know when –</p> <p>24 I don't know which ones were kept current. I</p> <p>25 don't know which ones were cured in December.</p>	<p>Page 155</p> <p>1 JAMES DONDERO</p> <p>2 I don't know which ones were cured in January</p> <p>3 or February. I don't know.</p> <p>4 Q. Is it your testimony that you</p> <p>5 believe that one or more of Highland affiliates</p> <p>6 made a payment in December 2020 to cure – as a</p> <p>7 cure payment?</p> <p>8 MS. DEITSCH-PEREZ: Object to the</p> <p>9 form.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. I just – I'm sorry. I –</p> <p>12 A. I – I – okay.</p> <p>13 Q. Yeah. I just want to try to get</p> <p>14 this as clearly as I can. Did you –</p> <p>15 A. I believe –</p> <p>16 Q. Go ahead, sir.</p> <p>17 A. No. I'll let you go. It's better</p> <p>18 if you ask me.</p> <p>19 Q. Okay. Did you direct anybody to</p> <p>20 make any payment in December 2020 to Highland</p> <p>21 on behalf of any affiliate that you owned or</p> <p>22 controlled?</p> <p>23 A. I believe all notes are outstanding</p> <p>24 and current and in good standing. I don't know</p> <p>25 when they were cured.</p>
<p>Page 156</p> <p>1 JAMES DONDERO</p> <p>2 Q. Are you just talking about the term</p> <p>3 notes here or the demand notes as well?</p> <p>4 A. All of the above. All of the notes</p> <p>5 as far as I know.</p> <p>6 Q. Are you aware that in December 2020,</p> <p>7 Highland made a demand for payment under all of</p> <p>8 the demand notes?</p> <p>9 A. And I believe they're all current as</p> <p>10 far as interest and principal amortization. I</p> <p>11 believe they've all been cured.</p> <p>12 Q. Okay. Can you identify any payment</p> <p>13 that was made in December 2020 to Highland on</p> <p>14 behalf of yourself or any entity that you</p> <p>15 directly or indirectly own or control?</p> <p>16 A. I wouldn't have been involved in –</p> <p>17 I wouldn't have been involved in normal course</p> <p>18 payments. I know there were – I know for sure</p> <p>19 there were cure payments in January. I don't</p> <p>20 know if there were in December.</p> <p>21 Q. Okay. And that's – we'll get to</p> <p>22 January. I'm just trying to finish up</p> <p>23 December.</p> <p>24 Are you aware of any payments made</p> <p>25 in December 2020 –</p>	<p>Page 157</p> <p>1 JAMES DONDERO</p> <p>2 MS. DEITSCH-PEREZ: Object to the</p> <p>3 form.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. – by you – by you or any entity</p> <p>6 directly or indirectly owned or control by you</p> <p>7 to Highland?</p> <p>8 A. I don't have awareness.</p> <p>9 Q. Do you recall that early in 2021,</p> <p>10 Highland gave notice of default on the three</p> <p>11 term notes?</p> <p>12 A. I'm aware in – that January – yes,</p> <p>13 I guess I am aware that Highland declared them</p> <p>14 in default in January, yes.</p> <p>15 Q. And you're aware that in addition to</p> <p>16 declaring them in default, they gave notice of</p> <p>17 acceleration?</p> <p>18 A. I'm not aware of acceleration. I'm</p> <p>19 aware of, I guess, default I had heard.</p> <p>20 Q. Did you ever see the</p> <p>21 notice-of-default letters that Highland sent to</p> <p>22 NexPoint HCRE and services?</p> <p>23 A. I don't believe I've seen all of</p> <p>24 them. I think I've seen one on demand notes.</p> <p>25 I don't think I've – I don't remember seeing</p>



<p>Page 158</p> <p>1 JAMES DONDERO</p> <p>2 any on term loans.</p> <p>3 Q. All right. So as you sit here right</p> <p>4 now, you don't have a recollection of having</p> <p>5 seen the default notices that were sent by</p> <p>6 Highland in January 2021 with respect to the</p> <p>7 term notes, right?</p> <p>8 MS. DEITSCH-PEREZ: Why don't you</p> <p>9 show him one.</p> <p>10 THE WITNESS: I don't recall. Yeah.</p> <p>11 I mean, I don't – I don't recall seeing</p> <p>12 any of them.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. Okay. How did you learn that</p> <p>15 Highland had sent the default notices?</p> <p>16 A. I believe it was at a hearing I</p> <p>17 attended in person from which I called Frank,</p> <p>18 and I was surprised and annoyed that the</p> <p>19 relative de minimis amounts hadn't been paid;</p> <p>20 and I asked him what does it take to cure them</p> <p>21 or make them current.</p> <p>22 And then he told me the numbers, and</p> <p>23 they were small and de minimis; and I told him</p> <p>24 make sure they get paid and make sure the notes</p> <p>25 are cured.</p>	<p>Page 159</p> <p>1 JAMES DONDERO</p> <p>2 Q. Did you do anything or say anything</p> <p>3 else with respect to your – your learning</p> <p>4 about the declaration of default?</p> <p>5 A. No. It – no. I don't remember</p> <p>6 anything else.</p> <p>7 Q. Did you ask your – do you know</p> <p>8 whether anyone acting on behalf of ever reached</p> <p>9 out to Highland with respect to the payments</p> <p>10 that were made in January of 2021 as cure</p> <p>11 payments as you described them?</p> <p>12 A. Frank was Highland.</p> <p>13 Q. I'm asking –</p> <p>14 A. Frank – Frank – Frank was the</p> <p>15 person I reached out to at Highland. Who else</p> <p>16 would I reach out to at Highland?</p> <p>17 Q. Did you – did you reach out to</p> <p>18 anybody else?</p> <p>19 A. No. Just Frank.</p> <p>20 Q. Okay. Did anybody acting on your</p> <p>21 behalf reach out to anybody else?</p> <p>22 A. Not that I know of or not that I</p> <p>23 thought was necessary.</p> <p>24 Q. In January of 2021, did it occur to</p> <p>25 you to either communicate with or through your</p>
<p>Page 160</p> <p>1 JAMES DONDERO</p> <p>2 lawyer, with Mr. Seery, about this?</p> <p>3 MS. DEITSCH-PEREZ: Object to the</p> <p>4 form.</p> <p>5 THE WITNESS: No. I thought Frank</p> <p>6 was fully empowered.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Okay. Did you ever confirm your</p> <p>9 understanding about the cure with</p> <p>10 Mr. Waterhouse in writing?</p> <p>11 A. In writing? No. I believe it was</p> <p>12 all in that phone conversation from the Court.</p> <p>13 I don't – I don't recall anything in writing,</p> <p>14 but I'll check.</p> <p>15 Q. Do you recall sending him an e-mail</p> <p>16 in which you confirmed with Mr. Waterhouse your</p> <p>17 understanding that the debtor had agreed that</p> <p>18 the payments that were being paid would</p> <p>19 constitute a cure?</p> <p>20 A. No, I didn't – no. At the time I</p> <p>21 didn't think it was necessary. It was – the</p> <p>22 cure amount was calculated by Frank. It was</p> <p>23 paid immediately. It was accepted. I never –</p> <p>24 I never thought to memorialize it beyond that.</p> <p>25 Q. Okay. Did you – did you ever ask</p>	<p>Page 161</p> <p>1 JAMES DONDERO</p> <p>2 your attorneys to confirm with Pachulski Stang</p> <p>3 Ziehl &amp; Jones or anybody acting on behalf of</p> <p>4 the debtor that the payments that were made</p> <p>5 would be deemed to be cure payments?</p> <p>6 MS. DEITSCH-PEREZ: I'm going to not</p> <p>7 to disclose communications with counsel.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. Okay. Do you know whether your</p> <p>10 lawyers or anybody acting on your behalf ever</p> <p>11 sought to confirm your understanding that the</p> <p>12 payments would be deemed to have cured the</p> <p>13 default under the three term notes?</p> <p>14 A. Not that I'm aware of.</p> <p>15 Q. Okay. Is there any written record</p> <p>16 of your call with Mr. Waterhouse?</p> <p>17 A. If it was from my cell phone, I'm</p> <p>18 sure there's a written record taking place of</p> <p>19 the call taking place.</p> <p>20 Q. Right. But did you take any notes,</p> <p>21 or is there anything in writing that</p> <p>22 memorialized or reflected your conversation</p> <p>23 with Mr. Waterhouse in January of 2021 about</p> <p>24 the cure?</p> <p>25 A. Not that I'm aware of and not that I</p>

<p>Page 162</p> <p>1 JAMES DONDERO</p> <p>2 thought was necessary.</p> <p>3 Q. Okay. Did – did you ever tell</p> <p>4 Judge Jernigan that you had made cure payments?</p> <p>5 A. I didn't know I'm allowed to have</p> <p>6 ex parte conversations with her, but there's a</p> <p>7 lot of things I'd like to tell her about this</p> <p>8 case; but no I did not.</p> <p>9 Q. All right. I'm not talking about</p> <p>10 ex parte conversations, sir. Let's take</p> <p>11 confirmation, for example.</p> <p>12 Did you or anybody acting on any of</p> <p>13 the defendants' behalf ever inform</p> <p>14 Judge Jernigan that Frank Waterhouse had told</p> <p>15 you that the payments in January 2021 would be</p> <p>16 deemed to be cure payments?</p> <p>17 A. Not that I'm aware of.</p> <p>18 Q. Thank you.</p> <p>19 MR. MORRIS: Give me one more</p> <p>20 moment. In fact, I'm going to ask for just</p> <p>21 three minutes. I'm going to check and see</p> <p>22 how much more I have here. It won't be</p> <p>23 long if I have anything. So let's go off</p> <p>24 the record.</p> <p>25 THE VIDEOGRAPHER: Would you like to</p>	<p>Page 163</p> <p>1 JAMES DONDERO</p> <p>2 go off the record?</p> <p>3 All right. We're off record at</p> <p>4 5:03.</p> <p>5 (Whereupon, a break was taken.)</p> <p>6 THE VIDEOGRAPHER: We are back on</p> <p>7 the record. The time is 5:06.</p> <p>8 MR. MORRIS: Okay. Asia, can you</p> <p>9 please put on the screen Exhibit 24, which</p> <p>10 are Mr. Dondero's written responses to</p> <p>11 discovery?</p> <p>12 MS. CANTY: (Complies with request.)</p> <p>13 (Whereupon, Exhibit 24, Defendant</p> <p>14 James Dondero's Objections and Responses to</p> <p>15 Plaintiff's Requests for Admission,</p> <p>16 Interrogatories, and Requests for</p> <p>17 Production, marked for identification, as</p> <p>18 of this date.)</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. And Mr. Dondero, I don't know if you</p> <p>21 have that binder in front of you, but this is</p> <p>22 one of the documents that will be in there,</p> <p>23 Number 24.</p> <p>24 A. Number 24?</p> <p>25 Q. Yes, sir.</p>
<p>Page 164</p> <p>1 JAMES DONDERO</p> <p>2 MS. DEITSCH-PEREZ: Do you got it?</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. Have you seen this document before,</p> <p>6 sir?</p> <p>7 A. No.</p> <p>8 Q. Let's go to page 15 and see if that</p> <p>9 refreshes your recollection.</p> <p>10 Is that your signature?</p> <p>11 A. Yes.</p> <p>12 MS. DEITSCH-PEREZ: Yeah. It's late</p> <p>13 in the day, John.</p> <p>14 THE WITNESS: Yes.</p> <p>15 MR. MORRIS: That's why I showed him</p> <p>16 the signature.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. Does that refresh your recollection</p> <p>19 that you've seen this before?</p> <p>20 A. No. It refreshes my recollection</p> <p>21 that I signed it.</p> <p>22 Q. Okay. And –</p> <p>23 A. Not that I recall – not that I</p> <p>24 looked at it in detail in any way.</p> <p>25 Q. Okay. Did you review it before you</p>	<p>Page 165</p> <p>1 JAMES DONDERO</p> <p>2 signed it?</p> <p>3 A. I – as I sit here today, I don't</p> <p>4 remember. So let's go through whatever</p> <p>5 questions you have.</p> <p>6 Q. Okay.</p> <p>7 MR. MORRIS: Go to page 8, please.</p> <p>8 MS. CANTY: (Complies with request.)</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. You will see that Interrogatories 3</p> <p>11 and 4 ask in substance for you to admit that</p> <p>12 you never disclosed the terms or existence of</p> <p>13 the agreement to Frank Waterhouse prior to the</p> <p>14 commencement of the adversary proceeding.</p> <p>15 Do you see that?</p> <p>16 MS. DEITSCH-PEREZ: Wait. Object to</p> <p>17 the form. Those are two different</p> <p>18 requests.</p> <p>19 MR. MORRIS: Okay. Okay. I was</p> <p>20 trying to do this quickly. We'll do it –</p> <p>21 we'll do it – we'll do it your way?</p> <p>22 MS. DEITSCH-PEREZ: No. I think you</p> <p>23 – okay.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. So let's look at Request for</p>

<p>Page 166</p> <p>1 JAMES DONDERO</p> <p>2 Admission Number 3.</p> <p>3 Do you see that Highland asked you</p> <p>4 to admit, quote, "that prior to the</p> <p>5 commencement of the adversary proceeding, you</p> <p>6 never disclosed the terms of the agreement to</p> <p>7 Frank Waterhouse," close quote?</p> <p>8 A. That's on page 8, Number 3, right?</p> <p>9 Q. Correct. And you denied that,</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Did you disclose the terms of</p> <p>13 the agreement as we've defined that term to</p> <p>14 Frank Waterhouse prior to the commencement of</p> <p>15 the adversary proceeding?</p> <p>16 A. You know, what I've answered was a</p> <p>17 long answer earlier that the notes were</p> <p>18 compensation. The notes were to be – would be</p> <p>19 forgiven as part of compensation, shouldn't be</p> <p>20 included in any settlement.</p> <p>21 Frank and his group were deeply</p> <p>22 involved in all the plot plan and settlement,</p> <p>23 things that went back and forth. He knew.</p> <p>24 Now, whether he knew the specifics</p> <p>25 of the agreement in terms of, whether I ever</p>	<p>Page 167</p> <p>1 JAMES DONDERO</p> <p>2 discussed the MGM Cornerstone, Trustway, and</p> <p>3 the specifics of the agreement with him before,</p> <p>4 I don't – I don't know. So...</p> <p>5 Q. Do you –</p> <p>6 A. I think denying is appropriate, but</p> <p>7 I'm at not saying Frank knew the specifics of</p> <p>8 the agreement prior to the commencement of</p> <p>9 litigation.</p> <p>10 Q. Did you tell him that you had an</p> <p>11 agreement with the Dugaboy trustee?</p> <p>12 A. I told him there were mechanisms for</p> <p>13 forgiving the – or there were – there were</p> <p>14 mechanisms for the notes being compensation and</p> <p>15 not being part of any kind of cement or asset</p> <p>16 to the estate.</p> <p>17 Q. Okay. Do you recall telling him</p> <p>18 anything else during these conversations?</p> <p>19 A. No, I didn't – no. I didn't feel</p> <p>20 it necessary to talk to him about the</p> <p>21 specifics.</p> <p>22 Q. Okay. And do you recall having this</p> <p>23 discussion in any context other than in</p> <p>24 connection with the preparation of a settlement</p> <p>25 proposal?</p>
<p>Page 168</p> <p>1 JAMES DONDERO</p> <p>2 A. There wasn't another reason – there</p> <p>3 – no, I don't remember any other context.</p> <p>4 Q. Okay.</p> <p>5 A. But the settlements were regular and</p> <p>6 ongoing –</p> <p>7 Q. Okay.</p> <p>8 A. – in our mind, not in the</p> <p>9 Stonehill's mind.</p> <p>10 Q. Okay. Can you go – can we go to</p> <p>11 page 9, Request for Admission Number 8?</p> <p>12 A. Yes.</p> <p>13 Q. Number 8 we asked you to "admit that</p> <p>14 no document was created prior to the</p> <p>15 commencement of the adversary proceeding</p> <p>16 concerning the existence of the agreement."</p> <p>17 Have I read that right –</p> <p>18 A. I'm just reading what's on page 9,</p> <p>19 admit that prior to the agreement he never</p> <p>20 disclosed any other creditor.</p> <p>21 Q. No, no, no. I'm sorry. We're on</p> <p>22 Number 8.</p> <p>23 Can you read Number 8 out loud?</p> <p>24 A. Number 8, I'm sorry. Admit that no</p> <p>25 document was created prior to the commencement</p>	<p>Page 169</p> <p>1 JAMES DONDERO</p> <p>2 of the adversary proceeding concerning the</p> <p>3 existence of the agreement.</p> <p>4 Q. All right. So you've read that.</p> <p>5 And so my question to you is: Did you deny</p> <p>6 that because there are settlement proposals</p> <p>7 that you created that show zero value for the</p> <p>8 Promissory Notes at issue?</p> <p>9 A. Yes, partly.</p> <p>10 Q. Okay. What other documents were</p> <p>11 created prior to the commencement of the</p> <p>12 adversary proceeding that you contend concerned</p> <p>13 the existence of the agreement?</p> <p>14 A. I'm trying to think if the LPA does.</p> <p>15 Q. Okay. Anything else?</p> <p>16 A. No. That would be – that would be</p> <p>17 it.</p> <p>18 Q. Okay. Request for Admission</p> <p>19 Number 9, can you identify the creditor that</p> <p>20 caused you to deny the Request for Admission</p> <p>21 Number 9?</p> <p>22 A. I believe all the creditors via the</p> <p>23 settlement agreements; but, you know,</p> <p>24 specifically Clubock, you know, and to the</p> <p>25 extent Frank is a creditor, Frank.</p>

<p>Page 170</p> <p>1 JAMES DONDERO</p> <p>2 Q. But you just testified a few minutes</p> <p>3 ago, I thought, that you didn't specifically</p> <p>4 tell Mr. Waterhouse of the terms of the</p> <p>5 agreements to him, right? Did I miss –</p> <p>6 A. That's right. I mean, not the</p> <p>7 specific terms, correct.</p> <p>8 Q. Okay. So is there any creditor to</p> <p>9 whom you – is there any creditor of Highland's</p> <p>10 to whom you disclosed the existence of the</p> <p>11 agreements that you entered into with the</p> <p>12 Dugaboy trustee prior to the commencement of</p> <p>13 the adversary proceeding?</p> <p>14 MS. DEITSCH-PEREZ: Asked and</p> <p>15 answered.</p> <p>16 THE WITNESS: Yeah. I mean,</p> <p>17 generally, all the creditors via the</p> <p>18 settlement. And then we have lots of</p> <p>19 one-off conversations with Clubock</p> <p>20 representing UBS where the notes were</p> <p>21 described as going to be forgiven</p> <p>22 compensation, never part of the estate.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. All right. I don't – I don't want</p> <p>25 to wrestle with you.</p>	<p>Page 171</p> <p>1 JAMES DONDERO</p> <p>2 A. Sure.</p> <p>3 Q. I'm going to remind you that when I</p> <p>4 use the word "agreements," I'm referring</p> <p>5 specifically to the agreements that were set</p> <p>6 forth in paragraph 82 of your answer.</p> <p>7 Do you understand that?</p> <p>8 A. Yes. And so I guess my answer is</p> <p>9 generally but not specifically.</p> <p>10 Q. Okay. And when you say "generally,"</p> <p>11 you don't mean that you disclosed the existence</p> <p>12 or terms of the agreement to any creditor.</p> <p>13 What you mean is that you told all of the</p> <p>14 creditors that you believed that the notes</p> <p>15 should be forgiven as part of compensation.</p> <p>16 Do I have that right?</p> <p>17 A. Well, that they would be forgiven as</p> <p>18 part of compensation.</p> <p>19 Q. Okay. Subject to that correction,</p> <p>20 are we on the same page now?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Can we go to page 12,</p> <p>23 Interrogatory Number 2?</p> <p>24 A. This is still in Section 24?</p> <p>25 Q. Yes, sir.</p>
<p>Page 172</p> <p>1 JAMES DONDERO</p> <p>2 MS. DEITSCH-PEREZ: Object to the</p> <p>3 form.</p> <p>4 THE WITNESS: 24, I'm sorry.</p> <p>5 Page 2?</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Page 12.</p> <p>8 A. Page 12. Yes. Which one?</p> <p>9 Q. Number 2.</p> <p>10 A. All right.</p> <p>11 Q. You didn't identify any email</p> <p>12 correspondence in response to Interrogatory</p> <p>13 Number 2; is that correct?</p> <p>14 A. I don't have my e-mails. So we have</p> <p>15 painfully little from the Highland estate.</p> <p>16 Q. Okay.</p> <p>17 A. I think at the time we responded, we</p> <p>18 thought we might get access to things; but we</p> <p>19 haven't been able to come up with anything. We</p> <p>20 have – we have no access to anything.</p> <p>21 Q. Okay. So as you sit here today, you</p> <p>22 cannot identify any e-mail correspondence that</p> <p>23 discusses the existence of the agreement,</p> <p>24 correct?</p> <p>25 A. Not yet, no.</p>	<p>Page 173</p> <p>1 JAMES DONDERO</p> <p>2 (Whereupon, Exhibit 27, Defendant</p> <p>3 NexPoint Advisors, L.P.'s Objections and</p> <p>4 Responses to Plaintiff's Requests for</p> <p>5 Admission, Interrogatories, and Requests</p> <p>6 for Production, marked for identification,</p> <p>7 as of this date.)</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. Let's go to Exhibit Number 27.</p> <p>10 A. Yes.</p> <p>11 Q. And if we can go to page 7.</p> <p>12 MR. MORRIS: I think – I don't know</p> <p>13 who's shuffling paper.</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. But if we're at page 7, we're</p> <p>16 looking at Interrogatory Number 3.</p> <p>17 Is the reason for the denial – and</p> <p>18 I apologize. I may be going too quickly</p> <p>19 because I know we're all anxious to finish, but</p> <p>20 I do want to represent to you that we're</p> <p>21 looking at the discovery responses of NexPoint</p> <p>22 Advisors.</p> <p>23 A. Right.</p> <p>24 Q. And if we went to page 12, we'd find</p> <p>25 your signature on that one, okay? So looking</p>

<p>Page 174</p> <p>1 JAMES DONDERO</p> <p>2 at –</p> <p>3 A. Yes.</p> <p>4 Q. – Request for Admission Number 3,</p> <p>5 is your answer the same on behalf of NexPoint</p> <p>6 Advisors as it was for yourself as to why you</p> <p>7 denied Request for Admission Number 3?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. If we can go to Request for</p> <p>10 Admission Number 6, that is the same Request</p> <p>11 for Admission that we talked about with respect</p> <p>12 to yourself in your individual capacity a</p> <p>13 moment ago.</p> <p>14 Is your reason for denying Request</p> <p>15 for Admission Number 6 the same reason that you</p> <p>16 gave for yourself?</p> <p>17 A. Yes.</p> <p>18 Q. And looking at Request for</p> <p>19 Admissions Number 7 and 8, is the reason that</p> <p>20 you denied those Requests for Admissions</p> <p>21 because you told Seery and the committee and</p> <p>22 Clubock that you wouldn't pay anything for the</p> <p>23 notes because they were supposed to be forgiven</p> <p>24 as part of your compensation?</p> <p>25 A. And the independent board, yes.</p>	<p>Page 175</p> <p>1 JAMES DONDERO</p> <p>2 Q. Okay. Is there any other reason</p> <p>3 that you denied Request for Admissions Number 7</p> <p>4 and 8?</p> <p>5 A. Not that I can think of at this</p> <p>6 point in time.</p> <p>7 I don't think the LPA applies much</p> <p>8 here, but I may be –</p> <p>9 MR. MORRIS: All right. I have no</p> <p>10 further questions.</p> <p>11 THE WITNESS: Wonderful. Thank you.</p> <p>12 Have a good evening.</p> <p>13 MR. MORRIS: Thank you. Take care.</p> <p>14 MS. DEITSCH-PEREZ: Thank you.</p> <p>15 MR. MORRIS: Bye now.</p> <p>16 THE VIDEOGRAPHER: All right. If</p> <p>17 there are no further questions, this</p> <p>18 concludes today's deposition. Volume II</p> <p>19 [sic] consists of three media. We are off</p> <p>20 the record at 5:21 p.m.</p> <p>21 THE COURT REPORTER: Everybody is</p> <p>22 leaving, and I wanted to get everybody's</p> <p>23 order on the record.</p> <p>24 MS. DEITSCH-PEREZ: I'd like the</p> <p>25 rough. And then the regular can be</p>
<p>Page 176</p> <p>1 JAMES DONDERO</p> <p>2 whenever you get the regular done. No</p> <p>3 special rush.</p> <p>4 THE COURT REPORTER: Okay. Thank</p> <p>5 you.</p> <p>6 MS. DEITSCH-PEREZ: You're welcome.</p> <p>7 THE COURT REPORTER: Ms. Canty, I</p> <p>8 think there's a standing order for a daily</p> <p>9 delivery – or an immediate delivery for</p> <p>10 your firm?</p> <p>11 MS. CANTY: Yes.</p> <p>12 THE COURT REPORTER: Okay. I just</p> <p>13 wanted to confirm that. I'll get that out</p> <p>14 tonight, then.</p> <p>15 MS. CANTY: Okay, thank you.</p> <p>16 (The witness is excused.)</p> <p>17 (Deposition of James Dondero</p> <p>18 concluded at 5:21 p.m. CDT.)</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 177</p> <p>1 C E R T I F I C A T E</p> <p>2</p> <p>3</p> <p>4 I, SUZANNE J. STOTZ, a Certified</p> <p>5 Shorthand Reporter, Registered Professional</p> <p>6 Reporter, Certified Realtime Reporter, and</p> <p>7 Notary Public in and for the State of Texas, do</p> <p>8 hereby certify that the foregoing is a true and</p> <p>9 accurate transcript of the stenograph<sup>ic</sup></p> <p>10 above-captioned matter.</p> <p>11</p> <p>12</p> <p>13</p> <p>14 SUZANNE J. STOTZ, CSR, RPR, CRR</p> <p>15 Texas Certification No. 11942</p> <p>16</p> <p>17</p> <p>18 DATED: November 4, 2021</p> <p>19</p> <p>20</p> <p>21 NOTE: THE CERTIFICATE APPENDED TO THIS</p> <p>22 TRANSCRIPT DOES NOT APPLY TO ANY REPRODUCTION</p> <p>23 OF THE SAME BY ANY MEANS, UNLESS UNDER THE</p> <p>24 DIRECT CONTROL AND/OR DIRECTION OF THE</p> <p>25 CERTIFYING COURT REPORTER.</p>



1 ERRATA SHEET

2 I have read my testimony in the foregoing  
3 transcript and believe it to be true and  
4 correct to the best of my knowledge and belief  
5 with the following changes:

6 PAGE LINE CHANGE

7 \_\_\_\_\_

8 \_\_\_\_\_

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17 \_\_\_\_\_

18 \_\_\_\_\_

19 WITNESS SIGNATURE DATE

20

21 Sworn and subscribed to before me this

22 \_\_\_\_ day of \_\_\_\_\_, 2021.

23

24 Notary Public of the

25 State of \_\_\_\_\_.

Index: \$1.55-million..acting

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## **EXHIBIT 100**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

IN RE:

CHAPTER 11

HIGHLAND CAPITAL  
MANAGEMENT, L.P.,  
Debtor.

CASE NO. 19-34054-SGI11

HIGHLAND CAPITAL  
MANAGEMENT, L.P.,  
Plaintiff,  
v.

ADVERSARY PROCEEDING  
NO: 21-03000-SGI

HIGHLAND CAPITAL  
MANAGEMENT FUND ADVISORS,  
L.P.; NEXPOINT ADVISORS,  
L.P.; HIGHLAND INCOME  
FUND; NEXPOINT STRATEGIC  
OPPORTUNITIES FUND;  
NEXPOINT CAPITAL, INC.;  
AND CLO HOLDCO, LTD.,  
Defendants.

REMOTE VIDEOTAPED DEPOSITION

OF

NANCY DONDERO

Monday, October 18, 2021

Reported by:  
ANNETTE ARLEQUIN, CCR, RPR, CRR, CLR  
JOB NO. 201194

Page 2	Page 3
<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5 October 18, 2021</p> <p>6 10:30 a.m. (Central)</p> <p>7</p> <p>8 Remote videotaped deposition of</p> <p>9 NANCY DONDERO, pursuant to Notice Rule</p> <p>10 30(b)(6) and individually, before</p> <p>11 Annette Arlequin, a Certified Court</p> <p>12 Reporter, a Registered Professional</p> <p>13 Reporter, a Certified Realtime</p> <p>14 Reporter, and a Realtime Systems</p> <p>15 Administrator and a Notary Public of</p> <p>16 the State of New York, New Jersey and</p> <p>17 Florida.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1</p> <p>2 A P P E A R A N C E S:</p> <p>3</p> <p>4 PACHULSKI STANG ZIEHL &amp; JONES</p> <p>5 Attorneys for Debtor</p> <p>6 150 California Street</p> <p>7 San Francisco, California 94111</p> <p>8 BY: JOHN MORRIS, ESQ.</p> <p>9 - and -</p> <p>10 PACHULSKI STANG ZIEHL &amp; JONES</p> <p>11 780 Third Avenue</p> <p>12 New York, New York 10017</p> <p>13 BY: HAYLEY WINOGRAD, ESQ.</p> <p>14 GREGORY DEMO, ESQ.</p> <p>15</p> <p>16</p> <p>17 STINSON</p> <p>18 Attorneys for Jim Dondero, HCMS, HCRE and NexPoint</p> <p>19 3102 Oak Lawn Avenue</p> <p>20 Dallas, Texas 75219</p> <p>21 BY: DEBORAH DEITSCH-PEREZ, ESQ.</p> <p>22 MICHAEL AIGEN, ESQ.</p> <p>23</p> <p>24</p> <p>25</p>
Page 4	Page 5
<p>1</p> <p>2 A P P E A R A N C E S(Cont'd.):</p> <p>3</p> <p>4 LATHAM &amp; WATKINS</p> <p>5 Attorneys for UBS Securities LLC and UBS AG London</p> <p>6 1271 Avenue of the Americas</p> <p>7 New York, New York 10020</p> <p>8 BY: SHANNON McLAUGHLIN, ESQ.</p> <p>9</p> <p>10 HELLER DRAPER &amp; HORN</p> <p>11 Attorneys for Dugaboy</p> <p>12 650 Poydras Street</p> <p>13 New Orleans, Louisiana 70130</p> <p>14 BY: DOUGLAS DRAPER, ESQ.</p> <p>15</p> <p>16</p> <p>17 GREENBERG TRAURIG</p> <p>18 Attorneys for Nancy Dondero</p> <p>19 2200 Ross Avenue</p> <p>20 Dallas, Texas 75201</p> <p>21 BY: DANIEL ELMS, ESQ.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1</p> <p>2 A P P E A R A N C E S(Cont'd.):</p> <p>3</p> <p>4</p> <p>5 MUNSCH HARDT KOPF &amp; HARR</p> <p>6 Attorneys for Highland Capital Management</p> <p>7 Fund Advisors, L.P. and NexPoint Advisors L.P.</p> <p>8 500 N. Akard Street</p> <p>9 Dallas, Texas 75201</p> <p>10 BY: DAVOR RUKAVINA, ESQ.</p> <p>11 THOMAS BERGHMAN, ESQ.</p> <p>12</p> <p>13</p> <p>14 ALSO PRESENT:</p> <p>15</p> <p>16 AARON LAWRENCE, Clerk, Quinn Emanuel</p> <p>17 LA ASIA CANTY, Paralegal from Pachulski</p> <p>18 PAIGE MONTGOMERY, Litigation Trust Attorney</p> <p>19 PATRICK DAUGHERTY (as noted)</p> <p>20 DEBORAH NEWMAN</p> <p>21 MANUEL GARCIA, Legal Videographer</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p>Page 6</p> <p>1</p> <p>2 IT IS HEREBY STIPULATED AND</p> <p>3 AGREED by and between the attorneys for</p> <p>4 the respective parties herein, that</p> <p>5 filing and sealing be and the same are</p> <p>6 hereby waived;</p> <p>7 IT IS FURTHER STIPULATED AND</p> <p>8 AGREED that all objections, except as</p> <p>9 to the form of the question, shall be</p> <p>10 reserved to the time of the trial;</p> <p>11 IT IS FURTHER STIPULATED AND</p> <p>12 AGREED that the within deposition may</p> <p>13 be sworn to and signed before any</p> <p>14 officer authorized to administer an</p> <p>15 oath, with the same force and effect as</p> <p>16 if signed and sworn to before the</p> <p>17 Court.</p> <p>18</p> <p>19 - o0o -</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 7</p> <p>1 N. Dondero</p> <p>2 THE VIDEOGRAPHER: Good morning.</p> <p>3 My name is Manuel Garcia. I'm a</p> <p>4 certified legal videographer in</p> <p>5 association with TSG Reporting, Inc.</p> <p>6 Due to the severity of COVID-19,</p> <p>7 and following the practice of social</p> <p>8 distancing, I will not be in the same</p> <p>9 room with the witness, but will record</p> <p>10 the deposition remotely.</p> <p>11 The reporter, Annette Arlequin,</p> <p>12 also will not be in the same room and</p> <p>13 will swear the witness remotely.</p> <p>14 Do all parties stipulate to the</p> <p>15 validity of this video recording and</p> <p>16 remote swearing, and that it will be</p> <p>17 admissible in the courtroom as if it</p> <p>18 had been taken following Rule 30 of the</p> <p>19 Federal Rules of Civil Procedures and</p> <p>20 the State's rules where this case is</p> <p>21 pending?</p> <p>22 MR. MORRIS: Yes.</p> <p>23 I would ask if anybody objects,</p> <p>24 to speak up. If you don't object, then</p> <p>25 we're going to go on negative notice</p>
<p>Page 8</p> <p>1 N. Dondero</p> <p>2 here.</p> <p>3 (No response.)</p> <p>4 MR. MORRIS: Thank you very much.</p> <p>5 And just to be clear, as I</p> <p>6 communicated with Debra last evening,</p> <p>7 the court reporter is not currently in</p> <p>8 the State of Texas.</p> <p>9 And I understand that counsel for</p> <p>10 all defendants in the notes litigation</p> <p>11 have waived any objection to the fact</p> <p>12 that the oath is being administered</p> <p>13 outside of the state.</p> <p>14 If anybody disagrees or objects</p> <p>15 to that, please speak up now.</p> <p>16 Thank you very much.</p> <p>17 Okay. You can swear the witness.</p> <p>18 * * *</p> <p>19 NANCY DONDERO, called as a</p> <p>20 witness, having been duly sworn by a</p> <p>21 Notary Public, was examined and</p> <p>22 testified as follows:</p> <p>23 THE WITNESS: Yes.</p> <p>24 EXAMINATION BY</p> <p>25 MR. MORRIS:</p>	<p>Page 9</p> <p>1 N. Dondero</p> <p>2 Q. Okay. Can you please state your</p> <p>3 name for the record?</p> <p>4 A. Nancy Dondero.</p> <p>5 Q. And where are you located right</p> <p>6 now, Ms. Dondero?</p> <p>7 A. In the law office of Deborah</p> <p>8 Deitsch-Perez.</p> <p>9 Q. Are you in Dallas?</p> <p>10 A. I am.</p> <p>11 Q. Is there anybody in the room with</p> <p>12 you right now?</p> <p>13 A. Yes.</p> <p>14 Q. Who is in the room with you?</p> <p>15 A. Deborah Deitsch-Perez and Dan</p> <p>16 Elms.</p> <p>17 Q. Is there anybody else in the room</p> <p>18 with you right now?</p> <p>19 A. Electronically is Douglas Draper.</p> <p>20 Q. Okay. Thank you very much.</p> <p>21 Do you have a telephone with you</p> <p>22 right now?</p> <p>23 A. My cellphone?</p> <p>24 Q. Yes.</p> <p>25 A. Yes. It's in my purse.</p>



<p>Page 10</p> <p>1 N. Dondero</p> <p>2 Q. Is it turned off?</p> <p>3 A. It is – well, yes, um-hmm. It's</p> <p>4 on silent.</p> <p>5 Q. Okay. Thank you very much.</p> <p>6 My name is John Morris. I'm an</p> <p>7 attorney at Patchulski Stang Ziehl &amp; Jones.</p> <p>8 We represent the reorganized Highland</p> <p>9 Capital Management LP, and we're here for</p> <p>10 your deposition today.</p> <p>11 Do you understand that?</p> <p>12 A. I do.</p> <p>13 Q. Okay. Do you understand that</p> <p>14 this deposition is being videotaped?</p> <p>15 A. Yes.</p> <p>16 Q. And do you understand that I may</p> <p>17 seek to use that videotape in a court of</p> <p>18 law?</p> <p>19 A. Yes.</p> <p>20 Q. Do you understand that you're not</p> <p>21 allowed to communicate with anybody</p> <p>22 concerning the substance of your testimony</p> <p>23 until the deposition is completed?</p> <p>24 A. Yes.</p> <p>25 Q. Is there anything that would</p>	<p>Page 11</p> <p>1 N. Dondero</p> <p>2 prevent you from answering my questions</p> <p>3 today?</p> <p>4 A. No.</p> <p>5 Q. Do you have any problems with</p> <p>6 your memory?</p> <p>7 A. No.</p> <p>8 Q. Are you on any drugs or</p> <p>9 medications that might impair your ability</p> <p>10 to answer questions today?</p> <p>11 A. No.</p> <p>12 Q. Have you ever been deposed</p> <p>13 before?</p> <p>14 A. Once, a number of years ago.</p> <p>15 Q. Do you recall the subject matter</p> <p>16 of the testimony or the circumstances in</p> <p>17 which you gave a deposition?</p> <p>18 A. Personal injury.</p> <p>19 Q. And were you a witness or were</p> <p>20 you the plaintiff in that matter?</p> <p>21 A. Plaintiff.</p> <p>22 Q. Okay. So let me just give you</p> <p>23 the general ground rules so that there's –</p> <p>24 so that this can be efficient.</p> <p>25 This is a very difficult process</p>
<p>Page 12</p> <p>1 N. Dondero</p> <p>2 in normal times. It's particularly</p> <p>3 difficult because we're doing this</p> <p>4 remotely.</p> <p>5 So it is very important that you</p> <p>6 allow me to finish my question before you</p> <p>7 begin your answer.</p> <p>8 Is that fair?</p> <p>9 A. Yes.</p> <p>10 Q. And it's very important that I</p> <p>11 allow you to finish your answers before I</p> <p>12 begin the next question.</p> <p>13 And if I fail to do that, will</p> <p>14 you let me know?</p> <p>15 A. I will.</p> <p>16 Q. Okay. If there is anything that</p> <p>17 I ask you that you don't understand, will</p> <p>18 you let me know that?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. From time to time, we're</p> <p>21 going to put some documents on the screen.</p> <p>22 It's not a – you know, it's not intended</p> <p>23 to be a test.</p> <p>24 If you see a document on the</p> <p>25 screen and you think that you need to see a</p>	<p>Page 13</p> <p>1 N. Dondero</p> <p>2 different portion of the document to put</p> <p>3 what I'm asking you about in context, will</p> <p>4 you let me know that?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. I sent down to your lawyer</p> <p>7 last week 29 hard copies of certain</p> <p>8 documents.</p> <p>9 Do you have those handy?</p> <p>10 A. The big binder?</p> <p>11 Q. Yes.</p> <p>12 A. Yes.</p> <p>13 Q. Okay. All right. We may refer</p> <p>14 to those –</p> <p>15 MR. RUKAVINA: John, hold up for</p> <p>16 a second. This is the Davor Rukavina.</p> <p>17 I'm one of the attorneys defending two</p> <p>18 of the defendants. I just – we</p> <p>19 haven't taken appearances, John. I</p> <p>20 just want to make sure that the record</p> <p>21 is clear that Deborah will be</p> <p>22 objecting, Ms. Deitsch-Perez will be</p> <p>23 objecting for me so that I don't have</p> <p>24 you to object. In other words, when</p> <p>25 she objects, consider it an objection</p>

<p>Page 14</p> <p>1 N. Dondero</p> <p>2 on behalf of my clients NexPoint and</p> <p>3 HCM Financial Advisors.</p> <p>4 Is that acceptable, John?</p> <p>5 MR. MORRIS: Yes.</p> <p>6 MR. RUKAVINA: Thank you. Then</p> <p>7 there is no need for me to speak.</p> <p>8 MR. MORRIS: Okay. We'll miss</p> <p>9 you.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. If you need a break at any time,</p> <p>12 will you let me know that?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. It's very important that</p> <p>15 all of your responses to my questions be</p> <p>16 verbal so that the court reporter can take</p> <p>17 it down, okay?</p> <p>18 A. Okay.</p> <p>19 Q. And you do understand that the</p> <p>20 court reporter is going to record and</p> <p>21 transcribe every word that you and I say</p> <p>22 today, okay?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. From time to time, a</p> <p>25 lawyer might object to one of my questions.</p>	<p>Page 15</p> <p>1 N. Dondero</p> <p>2 That gives me the opportunity to think</p> <p>3 about whether or not the answer to the</p> <p>4 question would be admissible if I didn't</p> <p>5 correct it.</p> <p>6 I may ask you to just answer the</p> <p>7 question because I don't think the</p> <p>8 objection is going to be sustained. Just</p> <p>9 let the lawyers do their thing. And unless</p> <p>10 your lawyer directs you not to answer a</p> <p>11 question, I would ask that you answer every</p> <p>12 question that I ask, okay?</p> <p>13 A. Yes.</p> <p>14 Q. Thank you.</p> <p>15 That's where you need to give the</p> <p>16 verbal answer.</p> <p>17 Just to go through a couple of</p> <p>18 definitions so that I don't have to say</p> <p>19 full names on certain things throughout the</p> <p>20 day.</p> <p>21 If I use the word "Dugaboy," will</p> <p>22 you understand that I'm referring to The</p> <p>23 Dugaboy Investment Trust?</p> <p>24 A. Yes.</p> <p>25 Q. If I use the word "Highland,"</p>
<p>Page 16</p> <p>1 N. Dondero</p> <p>2 will you understand that I'm referring only</p> <p>3 to the entity that was known as Highland</p> <p>4 Capital Management LP, both before the</p> <p>5 bankruptcy filing and after the bankruptcy</p> <p>6 filing?</p> <p>7 A. Okay.</p> <p>8 Q. If I use the phrase "LP</p> <p>9 agreement" – withdrawn.</p> <p>10 Are you familiar with the fourth</p> <p>11 amended and restated limited partnership</p> <p>12 agreement of Highland Capital Management</p> <p>13 LP?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And if I refer to that</p> <p>16 document as the "LP agreement," will you</p> <p>17 understand what I'm referring to?</p> <p>18 A. Yes.</p> <p>19 Q. Do you understand that you're</p> <p>20 here today both in your individual capacity</p> <p>21 and in your capacity as the trustee or the</p> <p>22 30 – what's called the 30(b)(6)</p> <p>23 representative for Dugaboy?</p> <p>24 A. Yes.</p> <p>25 Q. And have you done anything to</p>	<p>Page 17</p> <p>1 N. Dondero</p> <p>2 prepare for today's deposition?</p> <p>3 A. Yes.</p> <p>4 Q. Can you tell me what you did to</p> <p>5 prepare for today's deposition?</p> <p>6 A. I met with my attorney. And I</p> <p>7 reviewed your big binder.</p> <p>8 Q. When did you meet with your</p> <p>9 attorneys?</p> <p>10 A. Yesterday.</p> <p>11 Q. Is that the only time that you</p> <p>12 conferred with your attorneys in</p> <p>13 preparation for today's deposition?</p> <p>14 A. In person, yes.</p> <p>15 Q. Okay. And how long did you meet</p> <p>16 in person yesterday?</p> <p>17 A. Four hours, four and a half</p> <p>18 hours.</p> <p>19 Q. And where did you meet?</p> <p>20 A. At Deborah's office.</p> <p>21 Q. And was anybody present there</p> <p>22 other than your attorneys?</p> <p>23 A. No.</p> <p>24 Q. Was anybody on speakerphone or</p> <p>25 otherwise communicating during the meeting</p>

<p>Page 18</p> <p>1 N. Dondero</p> <p>2 that was not one of your attorneys?</p> <p>3 A. No.</p> <p>4 Q. I think you mentioned, or you may</p> <p>5 have implied, that you communicated with</p> <p>6 your attorneys in preparation for today's</p> <p>7 deposition but it wasn't in person.</p> <p>8 Do I have that right?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. Did you speak with them on</p> <p>11 the phone?</p> <p>12 A. Zoom meeting.</p> <p>13 Q. And how many Zoom meetings did</p> <p>14 you have in preparation for today's</p> <p>15 deposition?</p> <p>16 A. Three.</p> <p>17 Q. Okay. And can you tell me when</p> <p>18 those three Zoom meetings occurred?</p> <p>19 A. Wednesday, Thursday, and Friday.</p> <p>20 Q. And can you tell me how long each</p> <p>21 of those meetings took place, each of those</p> <p>22 Zoom meetings took place?</p> <p>23 A. Approximately an hour.</p> <p>24 Q. Did anybody other than your</p> <p>25 attorneys participate in any of those three</p>	<p>Page 19</p> <p>1 N. Dondero</p> <p>2 Zoom meetings?</p> <p>3 A. No.</p> <p>4 Q. Did you review any documents in</p> <p>5 preparation for today's deposition other</p> <p>6 than the documents that I provided?</p> <p>7 A. No.</p> <p>8 MS. DEITSCH-PEREZ: To be fair, I</p> <p>9 think we did give her the Dugaboy</p> <p>10 notice. I don't remember if it's in</p> <p>11 your binder.</p> <p>12 MR. MORRIS: Deborah, are you</p> <p>13 referring to the 30(b)(6) notice?</p> <p>14 MS. DEITSCH-PEREZ: Yes.</p> <p>15 MR. MORRIS: I appreciate that.</p> <p>16 It was not in the binder.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. Other than the 30(b)(6) notice</p> <p>19 that was in the binder and the 29 documents</p> <p>20 that I provided to you, did you review</p> <p>21 anything else, Ms. Dondero, in preparation</p> <p>22 for today's deposition?</p> <p>23 A. Not that I'm aware of.</p> <p>24 Q. Was your brother present or did</p> <p>25 your brother participate in any of the four</p>
<p>Page 20</p> <p>1 N. Dondero</p> <p>2 preparation meetings that you described?</p> <p>3 A. No.</p> <p>4 Q. Since the beginning of the year,</p> <p>5 since January 1st, 2021, have you</p> <p>6 communicated with your brother at any time</p> <p>7 about the promissory notes that are the</p> <p>8 subject of this litigation?</p> <p>9 A. Not that I recall.</p> <p>10 Q. You don't recall ever speaking to</p> <p>11 your brother in 2021 about the promissory</p> <p>12 notes that are the subject of the</p> <p>13 litigation.</p> <p>14 Do I have that right?</p> <p>15 A. That's correct. I do not recall.</p> <p>16 Q. Do you recall if you had any</p> <p>17 conversations with your brother at any time</p> <p>18 in 2021 about any of the defenses that he</p> <p>19 is asserting in the litigation?</p> <p>20 A. What do you – can you be more</p> <p>21 specific?</p> <p>22 Q. Are you aware that your brother</p> <p>23 is a defendant in the lawsuits in which –</p> <p>24 withdrawn.</p> <p>25 Are you aware that you are a</p>	<p>Page 21</p> <p>1 N. Dondero</p> <p>2 defendant in certain lawsuits?</p> <p>3 A. Yes.</p> <p>4 Q. Are you aware that your brother</p> <p>5 is also a defendant in certain lawsuits?</p> <p>6 A. Yes.</p> <p>7 Q. Are you aware that your brother</p> <p>8 has asserted certain defenses to the claims</p> <p>9 that are being asserted against him in</p> <p>10 those lawsuits?</p> <p>11 A. Yes.</p> <p>12 Q. Did you ever discuss with your</p> <p>13 brother at any time in 2021 any aspect of</p> <p>14 the defenses that he is asserting in the</p> <p>15 lawsuits?</p> <p>16 A. No.</p> <p>17 Q. Did you discuss with your brother</p> <p>18 at any time in 2021 who would represent you</p> <p>19 in connection with the lawsuits?</p> <p>20 A. No, I don't believe so.</p> <p>21 Q. Did you communicate with your –</p> <p>22 and when I use the word "communication," I</p> <p>23 want to be clear, I mean any form of</p> <p>24 communication; either a meeting in public,</p> <p>25 on the telephone, by email or text.</p>

<p>Page 22</p> <p>1 N. Dondero</p> <p>2 Do you understand that?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Did you -- and did you</p> <p>5 understand that when I asked the last few</p> <p>6 questions about your communications with</p> <p>7 your brother?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Okay. In 2021, had you</p> <p>10 communicated with your brother at any time</p> <p>11 about who would represent Dugaboy?</p> <p>12 A. Not that I remember.</p> <p>13 Q. You're the trustee of Dugaboy.</p> <p>14 Do I have that right?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And Mr. Draper represents</p> <p>17 Dugaboy in Highland's bankruptcy case; is</p> <p>18 that right?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Your brother and people working</p> <p>21 for him identified and selected Mr. Draper</p> <p>22 to serve as Dugaboy's counsel, correct?</p> <p>23 MS. DEITSCH-PEREZ: Object to the</p> <p>24 form.</p> <p>25 A. I'm sorry. Can you ask that</p>	<p>Page 23</p> <p>1 N. Dondero</p> <p>2 again?</p> <p>3 Q. Sure.</p> <p>4 Your brother -- you didn't select</p> <p>5 Mr. Draper to represent Dugaboy; is that</p> <p>6 right?</p> <p>7 MS. DEITSCH-PEREZ: Object to the</p> <p>8 form.</p> <p>9 A. I believe he was referred.</p> <p>10 Q. And who was he referred to?</p> <p>11 A. Me.</p> <p>12 Q. Who referred Mr. Draper to you?</p> <p>13 A. I do not remember.</p> <p>14 Q. It's your testimony that</p> <p>15 Mr. Draper was referred to you, and you</p> <p>16 decided to retain Mr. Draper?</p> <p>17 A. I don't -- I don't know.</p> <p>18 Q. Do you know who decided to retain</p> <p>19 Mr. Draper?</p> <p>20 A. I do not.</p> <p>21 Q. Do you know who identified</p> <p>22 Mr. Draper as a possible attorney for</p> <p>23 Dugaboy?</p> <p>24 A. I do not know.</p> <p>25 Q. Do you know when Mr. Draper was</p>
<p>Page 24</p> <p>1 N. Dondero</p> <p>2 retained?</p> <p>3 A. No.</p> <p>4 Q. Do you recall when you first</p> <p>5 spoke to Mr. Draper -- withdrawn.</p> <p>6 Do you recall when you first</p> <p>7 communicated with Mr. Draper?</p> <p>8 A. A couple of months ago.</p> <p>9 Q. Would it have been before or</p> <p>10 after July 1st, 2021?</p> <p>11 A. I don't know.</p> <p>12 Q. It might have been before; it</p> <p>13 might have been after.</p> <p>14 Do I have that right?</p> <p>15 A. Correct.</p> <p>16 Q. Can you identify any matter that</p> <p>17 Mr. Draper has handled in the Highland</p> <p>18 bankruptcy other than his representation of</p> <p>19 Dugaboy in these notes litigations?</p> <p>20 A. I would have to look. I don't</p> <p>21 know offhand.</p> <p>22 MS. DEITSCH-PEREZ: Yeah, John, I</p> <p>23 don't -- this isn't a topic on the</p> <p>24 Dugaboy 30(b)(6). If you need her to</p> <p>25 go back and check the engagement -- I</p>	<p>Page 25</p> <p>1 N. Dondero</p> <p>2 mean, it's not something that I believe</p> <p>3 she's been prepared on. And so I don't</p> <p>4 think it's fair to have a memory test</p> <p>5 on the dates of these things.</p> <p>6 MR. MORRIS: Okay. I appreciate</p> <p>7 that, Deborah. I'm asking -- so let's</p> <p>8 clarify and say this was not a 30(b)(6)</p> <p>9 topic. It's not something that she</p> <p>10 should have prepared for. But I -- she</p> <p>11 is here in her individual capacity, and</p> <p>12 I'll stipulate that these particular</p> <p>13 questions are in her individual</p> <p>14 capacity.</p> <p>15 MS. DEITSCH-PEREZ: Well, but in</p> <p>16 her individual capacity, it's not the</p> <p>17 subject of the notes litigation. And</p> <p>18 then I would object that it's really</p> <p>19 beyond the scope.</p> <p>20 MR. MORRIS: Okay. There is no</p> <p>21 scope because she's here in her</p> <p>22 individual capacity. But the objection</p> <p>23 is noted. Thank you very much.</p> <p>24 MS. DEITSCH-PEREZ: Thank you.</p> <p>25 BY MR. MORRIS:</p>

<p>Page 26</p> <p>1 N. Dondero</p> <p>2 Q. Did you ever consider hiring an</p> <p>3 attorney for Dugaboy other than Mr. Draper?</p> <p>4 A. No.</p> <p>5 Q. Did you ever spend any time</p> <p>6 trying to identify an attorney who would</p> <p>7 represent Dugaboy?</p> <p>8 A. No.</p> <p>9 Q. The Stinson firm represents you</p> <p>10 personally in this litigation; is that</p> <p>11 right?</p> <p>12 A. That's incorrect.</p> <p>13 Q. Who – do you know the name of</p> <p>14 Ms. Deitsch-Perez's law firm?</p> <p>15 A. Her law firm is Stinson.</p> <p>16 Q. And does that law firm represent</p> <p>17 you in your individual capacity?</p> <p>18 A. Okay.</p> <p>19 Q. That's okay.</p> <p>20 A. She represents – okay. Dan is</p> <p>21 here representing me personally.</p> <p>22 Q. Okay. And Dan is with the</p> <p>23 Stinson firm, correct?</p> <p>24 A. That's incorrect.</p> <p>25 Q. What firm –</p>	<p>Page 27</p> <p>1 N. Dondero</p> <p>2 A. Dan is with Greenberg Traurig.</p> <p>3 Q. Ah. And I appreciate that.</p> <p>4 A. Sure.</p> <p>5 Q. Is that Dan Elms?</p> <p>6 A. Correct.</p> <p>7 Q. When did you retain Mr. Elms?</p> <p>8 A. Mid to late summer.</p> <p>9 Q. How did you identify Mr. Elms as</p> <p>10 your counsel?</p> <p>11 A. He was referred by Deborah.</p> <p>12 Q. And Deborah is Deborah</p> <p>13 Deitsch-Perez, counsel for certain other</p> <p>14 defendants in this lawsuit; is that right?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. Did you consider hiring</p> <p>17 anybody to represent you in this litigation</p> <p>18 other than Mr. Elms?</p> <p>19 A. No. I trusted Deborah's</p> <p>20 referral.</p> <p>21 Q. Had you worked with Deborah</p> <p>22 before she referred Mr. Elms to you?</p> <p>23 A. On this matter? Yes.</p> <p>24 Q. On any other matters?</p> <p>25 A. No.</p>
<p>Page 28</p> <p>1 N. Dondero</p> <p>2 Q. When did you first communicate</p> <p>3 with Ms. Deitsch-Perez?</p> <p>4 A. Prior to this deposition being</p> <p>5 scheduled in June.</p> <p>6 Q. Was she your counsel at the time?</p> <p>7 A. Yes.</p> <p>8 Q. When did you retain her?</p> <p>9 A. To the best of my recollection,</p> <p>10 it had to be late April or May of this</p> <p>11 year.</p> <p>12 Q. So Ms. Deitsch-Perez was</p> <p>13 representing you and your brother at the</p> <p>14 same time? Do I have that right?</p> <p>15 A. Yes.</p> <p>16 Q. Do you have any agreements of any</p> <p>17 kind with your brother concerning these</p> <p>18 lawsuits?</p> <p>19 Withdrawn. That wasn't a good</p> <p>20 question.</p> <p>21 Do you have any agreements or</p> <p>22 understandings with your brother concerning</p> <p>23 the defense of these lawsuits?</p> <p>24 A. I'm sorry. I don't understand</p> <p>25 the question.</p>	<p>Page 29</p> <p>1 N. Dondero</p> <p>2 Q. Have you heard the word</p> <p>3 "indemnification" before or "indemnity"?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Do you have an</p> <p>6 understanding of what that means?</p> <p>7 A. Generally.</p> <p>8 Q. What's your general understanding</p> <p>9 of the term "indemnity"?</p> <p>10 A. That one forgives another</p> <p>11 person's error.</p> <p>12 Q. Okay. I'm going to try and give</p> <p>13 you a little bit of a different definition</p> <p>14 and see if you understand it.</p> <p>15 Did your brother ever offer to</p> <p>16 satisfy and pay any judgment that might be</p> <p>17 entered against you in connection with</p> <p>18 these litigations?</p> <p>19 A. No.</p> <p>20 Q. Do you have any agreement of any</p> <p>21 kind or any understanding that he would be</p> <p>22 responsible for the outcome of these</p> <p>23 lawsuits?</p> <p>24 A. Only what is written in the trust</p> <p>25 agreement.</p>



<p>Page 30</p> <p>1 N. Dondero</p> <p>2 Q. Do you know whether the trust</p> <p>3 agreement protects you in your individual</p> <p>4 capacity as opposed to your capacity as the</p> <p>5 trustee of the Dugaboy trust?</p> <p>6 MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8 A. I'm sorry. Can you reask that</p> <p>9 question, Mr. Morris?</p> <p>10 Q. Sure.</p> <p>11 Do you know whether the trust</p> <p>12 agreement indemnifies you in your</p> <p>13 individual capacity, or is it only in your</p> <p>14 capacity as the trustee of the Dugaboy</p> <p>15 trust?</p> <p>16 MS. DEITSCH-PEREZ: Object to the</p> <p>17 form.</p> <p>18 A. That's a legal question I don't</p> <p>19 feel comfortable answering.</p> <p>20 Q. All right. I appreciate that it</p> <p>21 may have legal implications, but I just</p> <p>22 want to know what is in your head as a</p> <p>23 factual matter.</p> <p>24 Is it your personal</p> <p>25 understanding, whether it's right or wrong,</p>	<p>Page 31</p> <p>1 N. Dondero</p> <p>2 that you are indemnified in your personal</p> <p>3 capacity under the trust, under the Dugaboy</p> <p>4 trust?</p> <p>5 MS. DEITSCH-PEREZ: Object to the</p> <p>6 form.</p> <p>7 A. I would have to think about that.</p> <p>8 Q. Okay. Did your brother ever</p> <p>9 offer to pay any costs and expenses that</p> <p>10 you incur in your personal capacity in</p> <p>11 connection with this lawsuit?</p> <p>12 A. I don't understand.</p> <p>13 Q. Okay. So you're a defendant in</p> <p>14 your individual capacity in four different</p> <p>15 lawsuits.</p> <p>16 Do you understand that?</p> <p>17 A. Yes.</p> <p>18 Q. And Dugaboy is also a defendant</p> <p>19 in the same lawsuits, right?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. So I'm asking you whether</p> <p>22 your brother ever offered to pay any costs</p> <p>23 or expenses that you incur in your</p> <p>24 individual capacity in connection with</p> <p>25 these lawsuits?</p>
<p>Page 32</p> <p>1 N. Dondero</p> <p>2 A. No.</p> <p>3 Q. Okay. Greenberg Traurig only</p> <p>4 represents you in your individual capacity.</p> <p>5 Do I have that right?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Do you have any agreement</p> <p>8 with anybody as to who would pay the</p> <p>9 invoices rendered by Greenberg Traurig?</p> <p>10 A. Yes.</p> <p>11 Q. And what agreement is that?</p> <p>12 A. That Dugaboy will pay Greenberg</p> <p>13 Traurig's expenses, bills.</p> <p>14 Q. Okay. So pursuant to that</p> <p>15 agreement, you won't have to pay any legal</p> <p>16 expenses associated with the defense of</p> <p>17 these lawsuits in your individual capacity.</p> <p>18 Do I have that right?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Okay. Let's just get some</p> <p>21 background here.</p> <p>22 Are you currently employed,</p> <p>23 ma'am?</p> <p>24 A. I am.</p> <p>25 Q. By whom?</p>	<p>Page 33</p> <p>1 N. Dondero</p> <p>2 A. Crescent Research Services.</p> <p>3 Q. Do you have a direct or indirect</p> <p>4 ownership in that entity?</p> <p>5 A. I do.</p> <p>6 Q. And what is the nature of your</p> <p>7 interest?</p> <p>8 A. I own the company.</p> <p>9 Q. 100 percent; is that fair?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And what is the nature of</p> <p>12 the business of Crescent Research?</p> <p>13 A. It's an investigative firm.</p> <p>14 Q. And do you oversee the day-to-day</p> <p>15 operations of Crescent Research?</p> <p>16 A. I do.</p> <p>17 Q. And how many employees does</p> <p>18 Crescent Research have?</p> <p>19 A. I have an outside contractor at</p> <p>20 certain times when the workload demands it.</p> <p>21 Otherwise, it is just me.</p> <p>22 Q. Okay. And how long have you</p> <p>23 owned and operated Crescent Research?</p> <p>24 A. Since 1997.</p> <p>25 Q. Have you owned and operated</p>

<p>Page 34</p> <p>1 N. Dondero</p> <p>2 Crescent Research on a continuous basis</p> <p>3 since 1997 until today?</p> <p>4 A. Correct.</p> <p>5 Q. Have you had any other employment</p> <p>6 since 1997 other than the work that you do</p> <p>7 for Crescent Research?</p> <p>8 A. No.</p> <p>9 Q. Did you obtain a college degree?</p> <p>10 A. I did.</p> <p>11 Q. Where did you attend college?</p> <p>12 A. Penn State.</p> <p>13 Q. And you graduated from Penn</p> <p>14 State?</p> <p>15 A. Correct.</p> <p>16 Q. And when was that?</p> <p>17 A. 1987.</p> <p>18 Q. What was your degree in?</p> <p>19 A. Hotel restaurant management.</p> <p>20 Q. Was it a BA or BS?</p> <p>21 A. I believe it's a BS.</p> <p>22 Q. Okay. Do you have any</p> <p>23 postgraduate degrees?</p> <p>24 A. No.</p> <p>25 Q. Do you hold any licenses of any</p>	<p>Page 35</p> <p>1 N. Dondero</p> <p>2 kind other than your driver's license?</p> <p>3 A. I do.</p> <p>4 Q. Can you describe for me every</p> <p>5 license that you hold other than your</p> <p>6 driver's license?</p> <p>7 A. I'm a real estate agent. I am</p> <p>8 notary. I have several professional</p> <p>9 licenses. Asset recovery specialist.</p> <p>10 Those are off the top of my head that I</p> <p>11 remember.</p> <p>12 Q. What is an asset recovery</p> <p>13 specialist license?</p> <p>14 A. It's licensed through – I don't</p> <p>15 remember the organization. You have to –</p> <p>16 I'm not sure how to answer that,</p> <p>17 Mr. Morris.</p> <p>18 Q. Can you tell me what asset</p> <p>19 recovery is generally in the context of</p> <p>20 your license?</p> <p>21 A. Certainly.</p> <p>22 It's finding assets for companies</p> <p>23 that have gone bankrupt.</p> <p>24 Q. So do you typically get hired by</p> <p>25 an estate fiduciary, a bankruptcy estate</p>
<p>Page 36</p> <p>1 N. Dondero</p> <p>2 fiduciary?</p> <p>3 A. I haven't done asset recovery in</p> <p>4 a number of years.</p> <p>5 Q. Okay. As opposed to licenses, do</p> <p>6 you have any certifications of any kind?</p> <p>7 A. Not that I recall.</p> <p>8 Q. Can you tell me generally what</p> <p>9 you did professionally between the time you</p> <p>10 graduated from Penn State in 1987 and the</p> <p>11 time you formed and began working for</p> <p>12 Crescent Research?</p> <p>13 A. Immediately out of college, I</p> <p>14 worked for a company called Royal Schutt.</p> <p>15 Is an investigative firm. I built up their</p> <p>16 background division. The company closed.</p> <p>17 I took the background division and opened</p> <p>18 up a company called Info-Back Services. I</p> <p>19 ran that for a number of years in New</p> <p>20 Jersey.</p> <p>21 When I moved to Florida, I</p> <p>22 transferred that company and it became</p> <p>23 Crescent Research Services.</p> <p>24 We predominately do preemployment</p> <p>25 background screening, tenant research, and</p>	<p>Page 37</p> <p>1 N. Dondero</p> <p>2 I do a lot of trial prep for various</p> <p>3 attorneys.</p> <p>4 Q. All right. I think you mentioned</p> <p>5 three things. The first was preemployment</p> <p>6 background.</p> <p>7 Do I have that right?</p> <p>8 A. Yes.</p> <p>9 Q. And can you just describe</p> <p>10 generally what preemployment background</p> <p>11 pertains to?</p> <p>12 A. When people are applying for a</p> <p>13 job, I do the screening on their</p> <p>14 application prior to them being hired.</p> <p>15 Q. Okay. And what was the second</p> <p>16 piece?</p> <p>17 A. I do tenant screening as well,</p> <p>18 which is the equivalent for people renting</p> <p>19 properties.</p> <p>20 And the third component would be</p> <p>21 trial prep.</p> <p>22 Q. And what about trial prep? What</p> <p>23 does that mean? Can you help me to</p> <p>24 understand what investigative services you</p> <p>25 provide in the area of trial prep?</p>

<p>Page 38</p> <p>1 N. Dondero</p> <p>2 A. Certainly.</p> <p>3 I work for private attorneys. I</p> <p>4 worked for the public defender's office.</p> <p>5 I've worked to capital murder cases on</p> <p>6 down. I look for discrepancies in</p> <p>7 statements. I find witnesses, take</p> <p>8 statements and so forth. I help the lawyer</p> <p>9 prepare for trial.</p> <p>10 Q. Okay. You're familiar with a</p> <p>11 company, the company that we identified</p> <p>12 earlier, called Highland Capital Management</p> <p>13 LP?</p> <p>14 Do I have that right?</p> <p>15 A. Yes.</p> <p>16 Q. Oh, by the way, did you ever hear</p> <p>17 of a person named James P. Seery, Jr.?</p> <p>18 A. In regards to this case, yes.</p> <p>19 Q. Did you ever investigate</p> <p>20 Mr. Seery?</p> <p>21 A. No.</p> <p>22 Q. Did you ever investigate any of</p> <p>23 the independent directors who were</p> <p>24 appointed at Strand Advisors?</p> <p>25 A. Can you tell me who they are?</p>	<p>Page 39</p> <p>1 N. Dondero</p> <p>2 Q. Russell Nelms or John Dubel?</p> <p>3 A. No.</p> <p>4 Q. Have you undertaken any</p> <p>5 investigation of any current or former</p> <p>6 employee of Highland since October 19th,</p> <p>7 2019?</p> <p>8 A. No.</p> <p>9 Q. Are you aware that Highland is</p> <p>10 the company that your brother founded with</p> <p>11 Mark Okada in the 1990s?</p> <p>12 A. Yes.</p> <p>13 Q. And you're aware that Highland</p> <p>14 filed for bankruptcy, correct?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know when that occurred?</p> <p>17 A. October of '19, I believe.</p> <p>18 Q. Okay. I'll tell you it is</p> <p>19 October 19th, 2019. And if it's okay with</p> <p>20 you, I'd like to refer to October 19th,</p> <p>21 2019, as the petition date.</p> <p>22 Is that okay?</p> <p>23 A. Certainly.</p> <p>24 Q. Okay. When did you find out that</p> <p>25 Highland filed for bankruptcy?</p>
<p>Page 40</p> <p>1 N. Dondero</p> <p>2 A. It was either the day after --</p> <p>3 when it appeared in the Dallas Morning</p> <p>4 News.</p> <p>5 Q. So you didn't have any advanced</p> <p>6 notice that your brother was going to file</p> <p>7 Highland for bankruptcy; is that right?</p> <p>8 A. I did not.</p> <p>9 Q. Did you speak to your brother</p> <p>10 after learning that Highland filed for</p> <p>11 bankruptcy?</p> <p>12 A. I would imagine I called him,</p> <p>13 sure.</p> <p>14 Q. Do you have any recollection of</p> <p>15 what was said in the phone call that you</p> <p>16 imagine occurred?</p> <p>17 A. No.</p> <p>18 Q. Okay. Do you directly or</p> <p>19 indirectly own any economic interest in</p> <p>20 Highland today?</p> <p>21 A. No.</p> <p>22 Q. Do you understand that if I use</p> <p>23 the phrase "directly or indirectly," I'm</p> <p>24 asking whether you own it in your personal</p> <p>25 name or through a company that you might</p>	<p>Page 41</p> <p>1 N. Dondero</p> <p>2 own, such as Crescent Research?</p> <p>3 A. Okay.</p> <p>4 Q. Do you understand the phrase</p> <p>5 "directly or indirectly"?</p> <p>6 A. No.</p> <p>7 Can you elaborate, please?</p> <p>8 Q. Sure.</p> <p>9 A direct interest would be an</p> <p>10 interest that you hold in your own name, in</p> <p>11 the name of Nancy Dondero.</p> <p>12 Do you understand that?</p> <p>13 A. Okay.</p> <p>14 Q. And an indirect interest is an</p> <p>15 interest that you own through some other</p> <p>16 vehicle, through some other entity in which</p> <p>17 you also have an ownership interest.</p> <p>18 Do you understand that?</p> <p>19 A. Okay.</p> <p>20 Q. Okay. So --</p> <p>21 A. Yes. But are you referring to --</p> <p>22 Q. Go ahead.</p> <p>23 A. I'm just not clear.</p> <p>24 Do you mean like Highland funds</p> <p>25 or stock?</p>

<p>Page 42</p> <p>1 N. Dondero</p> <p>2 Q. I'm only talking about Highland</p> <p>3 Capital Management LP.</p> <p>4 A. No, I have no interest.</p> <p>5 Q. Have you ever directly or</p> <p>6 indirectly owned any limited partnership</p> <p>7 interests in Highland?</p> <p>8 A. No.</p> <p>9 Q. Have you ever directly or</p> <p>10 indirectly owned any interest of any kind</p> <p>11 in Highland?</p> <p>12 A. No.</p> <p>13 Q. Do you directly or indirectly</p> <p>14 have any claims against Highland that you</p> <p>15 know of?</p> <p>16 MS. DEITSCH-PEREZ: And, again,</p> <p>17 you are still talking about Nancy</p> <p>18 Dondero?</p> <p>19 MR. MORRIS: Yes, I am. Thank</p> <p>20 you.</p> <p>21 A. No, sir.</p> <p>22 Q. Did you have an understanding of</p> <p>23 the nature of Highland's business as of the</p> <p>24 petition date?</p> <p>25 A. Generally.</p>	<p>Page 43</p> <p>1 N. Dondero</p> <p>2 Q. And what did you understand the</p> <p>3 nature of Highland's business to be as of</p> <p>4 the petition date?</p> <p>5 A. A hedge fund.</p> <p>6 Q. Do you have any understanding of</p> <p>7 what a hedge fund is?</p> <p>8 A. Not really.</p> <p>9 Q. I appreciate that.</p> <p>10 By the way, do you know if</p> <p>11 Crescent Research has any claims against</p> <p>12 Highland?</p> <p>13 A. That's a very good question.</p> <p>14 There may be – I think I am creditor for a</p> <p>15 very little bit of money, but I'm not</p> <p>16 positive on that, if that was settled.</p> <p>17 Q. Do you recall filing any claim</p> <p>18 against Highland on behalf of Crescent</p> <p>19 Research?</p> <p>20 A. I can't say definitely one way or</p> <p>21 the other, but...</p> <p>22 Q. Okay. It's a matter of record.</p> <p>23 I don't mean to test your memory. It's</p> <p>24 okay.</p> <p>25 So other than your understanding</p>
<p>Page 44</p> <p>1 N. Dondero</p> <p>2 that Highland was a hedge fund, do you have</p> <p>3 any understanding or did you have any</p> <p>4 understanding as of the petition date</p> <p>5 regarding the nature of Highland's</p> <p>6 business?</p> <p>7 A. Since the petition date?</p> <p>8 Q. As of the petition date.</p> <p>9 A. No.</p> <p>10 Q. Do you have any – I apologize.</p> <p>11 A. I know obviously it's a financial</p> <p>12 company, and it has funds and so forth.</p> <p>13 Q. Have you learned anything about</p> <p>14 the nature of Highland's business since the</p> <p>15 petition date? Anything additional?</p> <p>16 A. No.</p> <p>17 Q. Okay. Do you have an</p> <p>18 understanding of the industry that Highland</p> <p>19 operates in or that Highland operated in</p> <p>20 prior to the petition date?</p> <p>21 A. Sure. Yes.</p> <p>22 Q. What industry did you understand</p> <p>23 Highland to be operating in prior to the</p> <p>24 petition date?</p> <p>25 A. The financial industry.</p>	<p>Page 45</p> <p>1 N. Dondero</p> <p>2 Q. Were you ever employed by</p> <p>3 Highland at any time?</p> <p>4 A. No.</p> <p>5 Q. Did you ever serve as an officer</p> <p>6 or director of Highland at any time?</p> <p>7 A. No.</p> <p>8 Q. Have you ever heard of an entity</p> <p>9 called Strand Advisors Inc.?</p> <p>10 A. Yes.</p> <p>11 Q. Can we refer to that entity as</p> <p>12 "Strand"?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Do you know if Strand has any</p> <p>15 relationship to Highland?</p> <p>16 A. General partner.</p> <p>17 Q. Do you recall when you learned</p> <p>18 that Strand was Highland's general partner?</p> <p>19 A. A number of years ago, I believe.</p> <p>20 Q. Do you recall how you learned</p> <p>21 that Strand was Highland's general partner?</p> <p>22 A. I do not.</p> <p>23 Q. Do you recall if you read it or</p> <p>24 if somebody told that to you?</p> <p>25 A. I do not recall.</p>

<p>Page 46</p> <p>1 N. Dondero</p> <p>2 Q. Do you recall the circumstances</p> <p>3 under which you learned that Strand was</p> <p>4 Highland's general partner?</p> <p>5 A. No, sir.</p> <p>6 Q. Have you done anything to try to</p> <p>7 verify whether Strand was in fact</p> <p>8 Highland's general partner?</p> <p>9 A. No.</p> <p>10 Q. Have you ever been employed by</p> <p>11 Strand?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form.</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. You can answer. That's one of</p> <p>16 those situations your lawyer can object to</p> <p>17 preserve the question. I think the</p> <p>18 question is fine, so you can answer the</p> <p>19 question.</p> <p>20 MS. DEITSCH-PEREZ: Do you mean</p> <p>21 technically like hired and worked as a</p> <p>22 W-2 employee?</p> <p>23 MR. MORRIS: Yes.</p> <p>24 A. Okay. And that's a no, a W-2</p> <p>25 employee.</p>	<p>Page 47</p> <p>1 N. Dondero</p> <p>2 Q. Okay. Have you ever served as an</p> <p>3 officer or director of Strand?</p> <p>4 A. No, sir.</p> <p>5 Q. Have you ever been employed by</p> <p>6 any entity in which you believed your</p> <p>7 brother had a direct or indirect ownership</p> <p>8 interest?</p> <p>9 A. No, sir.</p> <p>10 Q. Have you ever served as an</p> <p>11 officer or director for any entity in which</p> <p>12 you believed your brother had a direct or</p> <p>13 indirect ownership interest?</p> <p>14 A. No, sir.</p> <p>15 Q. Has Crescent Research ever</p> <p>16 provided services to Highland?</p> <p>17 A. Yes.</p> <p>18 Q. When did Crescent Research first</p> <p>19 provide services to Highland?</p> <p>20 A. It's been a number of years. The</p> <p>21 actual beginning, I don't know.</p> <p>22 Q. And did you, in your capacity as</p> <p>23 the owner of Crescent Research, run</p> <p>24 individualized background checks on</p> <p>25 prospective employees of Highland?</p>
<p>Page 48</p> <p>1 N. Dondero</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Did Crescent Research</p> <p>4 provide any services for Highland other</p> <p>5 than that?</p> <p>6 A. No, not that I'm aware of.</p> <p>7 Q. Okay. Have you ever been</p> <p>8 employed in the financial services</p> <p>9 industry?</p> <p>10 A. No, sir.</p> <p>11 Q. Other than as it may relate to</p> <p>12 this case, do you have any experience</p> <p>13 making decisions in the area of executive</p> <p>14 compensation?</p> <p>15 A. No.</p> <p>16 Q. Do you hold yourself out as an</p> <p>17 expert in the area of executive</p> <p>18 compensation?</p> <p>19 A. No.</p> <p>20 Q. Have you ever taken any classes</p> <p>21 or courses concerning executive</p> <p>22 compensation?</p> <p>23 A. No.</p> <p>24 Q. Have you ever been compensated</p> <p>25 for services rendered by you in the area of</p>	<p>Page 49</p> <p>1 N. Dondero</p> <p>2 executive compensation?</p> <p>3 A. No.</p> <p>4 Q. Have you ever conferred with</p> <p>5 anybody who you believed to be an expert in</p> <p>6 the area of executive compensation?</p> <p>7 A. No, sir.</p> <p>8 Q. Have you ever prepared any</p> <p>9 analysis of any kind concerning executive</p> <p>10 compensation?</p> <p>11 A. No, sir.</p> <p>12 Q. Have you ever asked anyone to</p> <p>13 prepare any analysis of any kind in the</p> <p>14 area of executive compensation?</p> <p>15 A. No.</p> <p>16 Q. Has anyone ever prepared an</p> <p>17 analysis for you in the area of executive</p> <p>18 compensation?</p> <p>19 A. I'm sorry, sir. Can you repeat</p> <p>20 that question?</p> <p>21 Q. Sure.</p> <p>22 Did anybody ever prepare any</p> <p>23 analysis for you that covered the topic –</p> <p>24 any topic concerning executive</p> <p>25 compensation?</p>



<p>Page 50</p> <p>1 N. Dondero</p> <p>2 A. No.</p> <p>3 Q. Do you have any knowledge as to</p> <p>4 how executives are compensated in the</p> <p>5 financial industry?</p> <p>6 A. Just a general awareness.</p> <p>7 Q. And what is the basis, what is</p> <p>8 the foundation of your general awareness?</p> <p>9 A. Obviously the better a company</p> <p>10 does, probably the more the CEO is paid.</p> <p>11 Q. Do you have any understanding of</p> <p>12 how executives are compensated in the</p> <p>13 financial industry other than that?</p> <p>14 A. No, sir.</p> <p>15 Q. All right. So now I'm going to</p> <p>16 ask you the same questions in your capacity</p> <p>17 as the trustee of Dugaboy.</p> <p>18 Did Dugaboy ever prepare any</p> <p>19 written analysis concerning executive</p> <p>20 compensation?</p> <p>21 A. No, sir.</p> <p>22 Q. Has Dugaboy ever asked anybody to</p> <p>23 prepare any analysis on any issue</p> <p>24 concerning executive compensation?</p> <p>25 A. No.</p>	<p>Page 51</p> <p>1 N. Dondero</p> <p>2 Q. Have you in your capacity as the</p> <p>3 trustee of Dugaboy ever prepared any</p> <p>4 analysis on the issue of executive</p> <p>5 compensation?</p> <p>6 A. No.</p> <p>7 Q. Have you ever done any analysis</p> <p>8 of the compensation that your brother</p> <p>9 received from Highland over time?</p> <p>10 A. Not that I am aware of.</p> <p>11 Q. Do you have any information that</p> <p>12 you can share with me concerning the</p> <p>13 compensation that you your brother received</p> <p>14 from Highland at any moment in time?</p> <p>15 A. In general terms, sure.</p> <p>16 Q. What can you share with me in</p> <p>17 general terms?</p> <p>18 A. I know Jim was not highly paid.</p> <p>19 I know for the last couple of years, his</p> <p>20 salary has been roughly less than a</p> <p>21 million, 500, 700,000, somewhere in that</p> <p>22 ballpark.</p> <p>23 Q. Did you play any role in the</p> <p>24 setting of his salary?</p> <p>25 A. I'm sorry?</p>
<p>Page 52</p> <p>1 N. Dondero</p> <p>2 Q. Did you personally ever play any</p> <p>3 role in the setting of Mr. Dondero's</p> <p>4 salary?</p> <p>5 A. In the salary that we are talking</p> <p>6 about, no, I did not.</p> <p>7 Q. Thank you.</p> <p>8 Did Dugaboy play any role in the</p> <p>9 setting of Mr. Dondero's salary?</p> <p>10 MS. DEITSCH-PEREZ: Do you mean</p> <p>11 setting or approving, John?</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. Let's go with setting first.</p> <p>14 A. Okay. No.</p> <p>15 Q. Did Dugaboy play any role in</p> <p>16 approving Mr. Dondero's salary?</p> <p>17 A. It has that right, but I don't</p> <p>18 believe it did in the salary that he had at</p> <p>19 the time.</p> <p>20 Q. Okay. I just want to nail this</p> <p>21 down.</p> <p>22 To the best of your recollection,</p> <p>23 Dugaboy never played a role in approving</p> <p>24 Mr. Dondero's salary.</p> <p>25 Do I have that right?</p>	<p>Page 53</p> <p>1 N. Dondero</p> <p>2 A. Can you rephrase that so I</p> <p>3 understand?</p> <p>4 Q. Sure.</p> <p>5 Can you think of any year in</p> <p>6 which Dugaboy approved of Mr. Dondero's</p> <p>7 salary from Highland?</p> <p>8 A. His actual salary?</p> <p>9 Q. Correct.</p> <p>10 A. Not – we are not talking about</p> <p>11 the notes now; you are talking about</p> <p>12 salary?</p> <p>13 Q. Yes.</p> <p>14 A. No – yes, okay, not to my</p> <p>15 recollection.</p> <p>16 Q. Do you know what Mr. Dondero's</p> <p>17 total compensation was in the year 2017?</p> <p>18 A. His total compensation, no.</p> <p>19 Q. Did you ever ask anybody what his</p> <p>20 compensation was in the year 2017?</p> <p>21 A. Not that I recall.</p> <p>22 Q. Do you know what Mr. Dondero's</p> <p>23 total compensation was in 2018?</p> <p>24 A. When you're saying "total," you</p> <p>25 mean just from Highland or from any entity?</p>

<p>Page 54</p> <p>1 N. Dondero</p> <p>2 Q. I'm just talking about Highland.</p> <p>3 A. Okay. Didn't we talk about those</p> <p>4 numbers?</p> <p>5 Q. We talked about salary before.</p> <p>6 A. Right.</p> <p>7 Q. And now I'm asking you about</p> <p>8 total compensation.</p> <p>9 Do you understand that.</p> <p>10 A. No, I don't.</p> <p>11 Q. Let me try again. Thank you for</p> <p>12 letting me know that. And I encourage you</p> <p>13 to let me know if you don't understand a</p> <p>14 question.</p> <p>15 Do you know what Mr. Dondero's</p> <p>16 total compensation was from Highland in</p> <p>17 2017?</p> <p>18 A. No, I do not.</p> <p>19 Q. Did you ever ask anybody what</p> <p>20 Mr. Dondero's total compensation from</p> <p>21 Highland was in 2017?</p> <p>22 A. No. Other than the figures that</p> <p>23 we are talking about. Because I'm still</p> <p>24 not understanding, John. I'm sorry.</p> <p>25 Q. Well, do you understand that</p>	<p>Page 55</p> <p>1 N. Dondero</p> <p>2 salary is just one component of</p> <p>3 Mr. Dondero's compensation?</p> <p>4 A. That's correct.</p> <p>5 Q. Okay.</p> <p>6 A. Um-hmm. That, I understand.</p> <p>7 Q. Okay. And so do you understand</p> <p>8 that I'm moving from salary to total</p> <p>9 compensation, and I'm asking for the value</p> <p>10 of any benefits he received from Highland</p> <p>11 when I use the word "compensation"?</p> <p>12 A. Okay. And –</p> <p>13 Q. So with that understanding, I'm</p> <p>14 going to start again.</p> <p>15 Do you know what Mr. Dondero's</p> <p>16 total compensation was in 2017?</p> <p>17 A. I do not know.</p> <p>18 Q. Did you ever ask anybody what</p> <p>19 Mr. Dondero's total compensation was in</p> <p>20 2017?</p> <p>21 A. No.</p> <p>22 Q. Did Dugaboy know what</p> <p>23 Mr. Dondero's compensation was in 2017?</p> <p>24 A. I do not believe so.</p> <p>25 Q. To the best of your knowledge,</p>
<p>Page 56</p> <p>1 N. Dondero</p> <p>2 did anybody on behalf of Dugaboy ever try</p> <p>3 to ascertain what Mr. Dondero's total</p> <p>4 compensation was in 2017?</p> <p>5 A. To the best of my knowledge, no.</p> <p>6 Q. Do you know what Mr. Dondero's</p> <p>7 total compensation from Highland was in</p> <p>8 2018?</p> <p>9 A. No.</p> <p>10 Q. Did you ever ask anybody what</p> <p>11 Mr. Dondero's total compensation was in</p> <p>12 2018?</p> <p>13 A. I don't believe so.</p> <p>14 Q. Did Dugaboy know what</p> <p>15 Mr. Dondero's total compensation was for</p> <p>16 2018?</p> <p>17 A. I don't think so.</p> <p>18 Q. To the best of your knowledge,</p> <p>19 did anybody ever ask on behalf of Dugaboy</p> <p>20 what Mr. Dondero's total compensation from</p> <p>21 Highland was in 2018?</p> <p>22 A. I don't recall. I don't know.</p> <p>23 Q. Do you know what Mr. Dondero's</p> <p>24 total compensation was in 2019?</p> <p>25 A. No.</p>	<p>Page 57</p> <p>1 N. Dondero</p> <p>2 Q. Did you ever ask anybody what</p> <p>3 Mr. Dondero's total compensation was in</p> <p>4 2019?</p> <p>5 A. Not that I remember.</p> <p>6 Q. Did Dugaboy know what</p> <p>7 Mr. Dondero's total compensation from</p> <p>8 Highland was in 2019?</p> <p>9 A. I don't believe so.</p> <p>10 Q. Do you know whether Dugaboy ever</p> <p>11 asked anybody what Mr. Dondero's total</p> <p>12 compensation was from Highland in 2019?</p> <p>13 A. I don't think so.</p> <p>14 THE WITNESS: Would it be okay if</p> <p>15 we take a break?</p> <p>16 MR. MORRIS: Just a couple more</p> <p>17 questions, Deborah.</p> <p>18 You know what, I apologize. Of</p> <p>19 course, of course we can take a break.</p> <p>20 MR. DRAPER: John, this is</p> <p>21 Douglas. Let me raise an issue with</p> <p>22 you.</p> <p>23 MR. MORRIS: Do you want to do</p> <p>24 this on the record?</p> <p>25 MR. DRAPER: Well, we can do it</p>

<p>Page 58</p> <p>1 N. Dondero</p> <p>2 off the record. But I just noticed on</p> <p>3 the participants you have Page</p> <p>4 Montgomery and Deborah Newman, who are</p> <p>5 not parties to this litigation, and I</p> <p>6 would request that you ask them to get</p> <p>7 off the line.</p> <p>8 MR. MORRIS: Okay. I'll take it</p> <p>9 under advisement, Douglas, but I will</p> <p>10 point out that there have always been</p> <p>11 people who have – they actually have</p> <p>12 an interest in this litigation, so I'm</p> <p>13 not even going to address that. They</p> <p>14 have an interest in the litigation,</p> <p>15 okay?</p> <p>16 MR. DRAPER: John –</p> <p>17 MR. MORRIS: Let's go off the</p> <p>18 record, please.</p> <p>19 THE VIDEOGRAPHER: The time is</p> <p>20 10:30. We are going off the record.</p> <p>21 (Recess is taken.)</p> <p>22 THE VIDEOGRAPHER: The time is</p> <p>23 10:51. Back on the record.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Ms. Dondero, can you hear me?</p>	<p>Page 59</p> <p>1 N. Dondero</p> <p>2 A. I can.</p> <p>3 Q. Okay. Did you communicate with</p> <p>4 anybody during the break about any of the</p> <p>5 questions that I asked?</p> <p>6 A. No.</p> <p>7 Q. Did you communicate with anybody</p> <p>8 on the break regarding any answers you gave</p> <p>9 to any of the questions that I asked?</p> <p>10 A. No.</p> <p>11 Q. Did you communicate with anybody</p> <p>12 on the break about any questions that I</p> <p>13 might ask in the future?</p> <p>14 A. No.</p> <p>15 Q. Did you communicate with anybody</p> <p>16 on the break about any answers you might</p> <p>17 give in the future?</p> <p>18 A. No.</p> <p>19 Q. I believe you testified earlier</p> <p>20 that you learned that your brother received</p> <p>21 less than a million dollars in salary.</p> <p>22 Do I have that right?</p> <p>23 A. Yes.</p> <p>24 Q. Can you tell me when you learned</p> <p>25 that?</p>
<p>Page 60</p> <p>1 N. Dondero</p> <p>2 A. I don't remember.</p> <p>3 Q. Do you remember how you learned</p> <p>4 it?</p> <p>5 A. No.</p> <p>6 Q. Did you ever know that your</p> <p>7 brother received a salary of a million</p> <p>8 dollars from Highland?</p> <p>9 A. A million dollars even?</p> <p>10 Q. Yes.</p> <p>11 A. No.</p> <p>12 Q. Did you ever learn that your</p> <p>13 brother had his salary increased to</p> <p>14 two-and-a-half million dollars from</p> <p>15 Highland?</p> <p>16 A. When?</p> <p>17 Q. I'm just asking if you ever</p> <p>18 learned it.</p> <p>19 A. Oh, no.</p> <p>20 Q. Did you ever learn that somebody</p> <p>21 made a decision to allocate the</p> <p>22 two-and-a-half million dollars between and</p> <p>23 among different entities that your brother</p> <p>24 owned and controlled?</p> <p>25 A. I have no idea.</p>	<p>Page 61</p> <p>1 N. Dondero</p> <p>2 Q. Did you have any conversation at</p> <p>3 any time with your brother about why he was</p> <p>4 receiving less than a million dollars from</p> <p>5 Highland?</p> <p>6 A. Why he was?</p> <p>7 Q. Yes.</p> <p>8 A. No.</p> <p>9 Q. Did you ever learn at any time</p> <p>10 how your brother's salary was established?</p> <p>11 A. Not that I recall.</p> <p>12 Q. Did you ever learn at any time as</p> <p>13 to who made the decision to set your</p> <p>14 brother's salary?</p> <p>15 A. Set his salary? No.</p> <p>16 Q. Are you aware your brother has</p> <p>17 retained experts in this case?</p> <p>18 A. I was not aware.</p> <p>19 Q. So is it fair to say that you've</p> <p>20 never spoken with any expert retained by</p> <p>21 your brother?</p> <p>22 A. Not that I'm aware of.</p> <p>23 Q. Let's talk about access to</p> <p>24 financial information.</p> <p>25 Do you have an understanding of</p>

<p>Page 62</p> <p>1 N. Dondero</p> <p>2 the term "financial statements"?</p> <p>3 A. Yes.</p> <p>4 Q. And what's your understanding of</p> <p>5 the term "financial statements"?</p> <p>6 A. Balance sheets, bank statements.</p> <p>7 Q. Would it include profit and loss</p> <p>8 statements?</p> <p>9 A. Certainly.</p> <p>10 Q. Would it include statements of</p> <p>11 operations?</p> <p>12 A. I would imagine, yes.</p> <p>13 Q. Using a definition of the term</p> <p>14 financial statements that incorporates each</p> <p>15 of the items that we just discussed, did</p> <p>16 you ever review Highland's financial</p> <p>17 statements prior to the petition date?</p> <p>18 A. No, I haven't reviewed Highland's</p> <p>19 financials.</p> <p>20 Q. Is it fair to say that you never</p> <p>21 reviewed Highland's balance sheet prior to</p> <p>22 the petition date?</p> <p>23 A. That's fair. Correct.</p> <p>24 Q. Did you ever see Highland's</p> <p>25 audited financial statements prior to the</p>	<p>Page 63</p> <p>1 N. Dondero</p> <p>2 petition date?</p> <p>3 A. Not that I remember, no.</p> <p>4 Q. Did you ever ask anybody to see</p> <p>5 Highland's financial statements?</p> <p>6 A. Not that I recall.</p> <p>7 Q. Did you ever have access to</p> <p>8 Highland's financial statements?</p> <p>9 A. No.</p> <p>10 Q. Did you know anything about</p> <p>11 Highland's financial condition prior to the</p> <p>12 petition date?</p> <p>13 A. No, I was not aware.</p> <p>14 Q. Have you ever heard of the term</p> <p>15 "portfolio company" in relation to</p> <p>16 Highland?</p> <p>17 A. I have.</p> <p>18 Q. Do you have an understanding of</p> <p>19 the term "portfolio company" as it relates</p> <p>20 to Highland?</p> <p>21 A. Yes, generally.</p> <p>22 Q. What is your general</p> <p>23 understanding of the term "portfolio</p> <p>24 company" as it relates to Highland?</p> <p>25 A. As I understand it, they're</p>
<p>Page 64</p> <p>1 N. Dondero</p> <p>2 companies owned by Highland under their</p> <p>3 umbrella.</p> <p>4 Q. And how did you form that</p> <p>5 understanding?</p> <p>6 A. I don't know.</p> <p>7 Q. Do you recall when you first came</p> <p>8 to the understanding that you have</p> <p>9 concerning the term "portfolio company" as</p> <p>10 it relates to Highland?</p> <p>11 A. No.</p> <p>12 Q. Based on your understanding of</p> <p>13 the term "portfolio company," do you know</p> <p>14 how many portfolio companies Highland had</p> <p>15 prior to the petition date?</p> <p>16 A. Several.</p> <p>17 Q. Can you give me an approximate</p> <p>18 number, to the best of your understanding?</p> <p>19 A. More than – I would imagine more</p> <p>20 than three.</p> <p>21 Q. And why do you imagine it's more</p> <p>22 than three?</p> <p>23 A. Because I'm aware of three.</p> <p>24 Q. Are you aware of any others,</p> <p>25 other than the three that you have in your</p>	<p>Page 65</p> <p>1 N. Dondero</p> <p>2 head?</p> <p>3 A. Not off the top of my head, no.</p> <p>4 Q. Can you identify any of the three</p> <p>5 portfolio companies that you have in your</p> <p>6 head?</p> <p>7 A. Certainly.</p> <p>8 Q. Okay. Can you please identify</p> <p>9 them?</p> <p>10 A. Trussway, Cornerstone, MGM.</p> <p>11 Q. And you believe that Highland had</p> <p>12 a – withdrawn.</p> <p>13 And your understanding was that</p> <p>14 Highland directly or indirectly owned each</p> <p>15 of those three companies?</p> <p>16 A. That was my understanding.</p> <p>17 Q. And what was the basis for that</p> <p>18 understanding?</p> <p>19 A. The basis of that understanding</p> <p>20 has to do with the forgiveness of the note.</p> <p>21 Q. So how did you learn that</p> <p>22 Highland had a direct or indirect economic</p> <p>23 interest in each of the three portfolio</p> <p>24 companies that you identified?</p> <p>25 A. I believe it was from Jim.</p>

<p>Page 66</p> <p>1 N. Dondero</p> <p>2 Q. Do you recall any source of</p> <p>3 information other than Jim?</p> <p>4 A. Not that I recall.</p> <p>5 Q. Prior to the petition date, were</p> <p>6 you aware of the price that Highland paid</p> <p>7 to acquire its interest in each of the</p> <p>8 three portfolio companies that you</p> <p>9 identified?</p> <p>10 A. Not that I am aware of.</p> <p>11 Q. Did you ever ask for any</p> <p>12 information concerning the price that</p> <p>13 Highland paid to acquire its interest in</p> <p>14 each of the three portfolio companies that</p> <p>15 you identified?</p> <p>16 A. No.</p> <p>17 Q. Prior to the petition date, did</p> <p>18 you have access to any information</p> <p>19 concerning the value of any of the three</p> <p>20 portfolio companies that you identified?</p> <p>21 A. Not that I am aware of.</p> <p>22 Q. Prior to the petition date –</p> <p>23 well, let's talk about them individually.</p> <p>24 You referred to MGM.</p> <p>25 Do I have that right?</p>	<p>Page 67</p> <p>1 N. Dondero</p> <p>2 A. Yes, sir.</p> <p>3 Q. And your understanding is that</p> <p>4 MGM was a Highland portfolio company; is</p> <p>5 that right?</p> <p>6 A. Yes.</p> <p>7 Q. Do you have any knowledge about</p> <p>8 the nature of Highland's interest in MGM?</p> <p>9 A. No.</p> <p>10 Q. Do you know if Highland owns debt</p> <p>11 or equity in MGM?</p> <p>12 A. I couldn't be sure.</p> <p>13 Q. Do you know when Highland</p> <p>14 acquired its interest in MGM?</p> <p>15 A. A number of years ago.</p> <p>16 MR. MORRIS: I just want the</p> <p>17 record to be clear and I want counsel</p> <p>18 to be clear, these questions that I'm</p> <p>19 asking now are going to be in</p> <p>20 Ms. Dondero's capacity as a 30(b)(6)</p> <p>21 witness for Dugaboy.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. So I'm going to ask a couple of</p> <p>24 questions.</p> <p>25 Again, at any time prior to the</p>
<p>Page 68</p> <p>1 N. Dondero</p> <p>2 petition date, did Dugaboy have an</p> <p>3 understanding of the nature of Highland's</p> <p>4 interest in MGM?</p> <p>5 A. Not that I'm aware of. Well,</p> <p>6 wait, I'm sorry. Can you – wait. Ask</p> <p>7 that again, John. Say that again.</p> <p>8 Q. Sure.</p> <p>9 At any time prior to the petition</p> <p>10 date –</p> <p>11 A. Right.</p> <p>12 Q. – did Dugaboy have an</p> <p>13 understanding as to the nature of</p> <p>14 Highland's interest in MGM?</p> <p>15 A. I knew that they had an interest</p> <p>16 in MGM prior to the petition date.</p> <p>17 Q. Okay. Did you or Dugaboy know</p> <p>18 the nature of that interest, in what form</p> <p>19 it held?</p> <p>20 A. Not specifically, John.</p> <p>21 Q. Did you or Dugaboy make any</p> <p>22 effort prior to the petition date to learn</p> <p>23 about the nature and extent of Highland's</p> <p>24 interest in MGM?</p> <p>25 A. Not that I recall.</p>	<p>Page 69</p> <p>1 N. Dondero</p> <p>2 Q. Did you or Dugaboy know what</p> <p>3 Highland's cost was to acquire its interest</p> <p>4 in MGM?</p> <p>5 A. No.</p> <p>6 Q. Did you or Dugaboy ever make any</p> <p>7 effort to try to determine what Highland's</p> <p>8 cost was to acquire its interest in MGM?</p> <p>9 A. No.</p> <p>10 Q. Did you ever ask for any</p> <p>11 information – withdrawn.</p> <p>12 Did you or Dugaboy ever ask</p> <p>13 anybody for any information concerning</p> <p>14 Highland's cost to acquire its interest in</p> <p>15 MGM?</p> <p>16 A. No.</p> <p>17 Q. Did you or Dugaboy ever obtain</p> <p>18 any information concerning the value of</p> <p>19 Highland's interest in MGM?</p> <p>20 A. Not that I recall.</p> <p>21 Q. Do you recall the value of</p> <p>22 Highland's interest in MGM as you sit here</p> <p>23 today?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>



<p>Page 70</p> <p>1 N. Dondero</p> <p>2 A. I'm sorry, John, the question?</p> <p>3 Q. Sure.</p> <p>4 I'm going to ask a different</p> <p>5 question. It was a fine objection.</p> <p>6 Do you recall the value of</p> <p>7 Highland's interest in MGM at any time</p> <p>8 prior to the petition date?</p> <p>9 A. I do not recall.</p> <p>10 Q. Did you or Dugaboy ever know the</p> <p>11 value of Highland's interest in MGM at any</p> <p>12 time prior to the petition date?</p> <p>13 A. No.</p> <p>14 Q. Did you or Dugaboy ever ask for</p> <p>15 any information concerning the value of</p> <p>16 Highland's interest in MGM at any time</p> <p>17 prior to the petition date?</p> <p>18 A. Not that I remember.</p> <p>19 Q. Prior to the petition date, did</p> <p>20 you or Dugaboy ever make any determination</p> <p>21 as to whether the value of Highland's</p> <p>22 interest in MGM exceeded its cost?</p> <p>23 A. I'm sorry. Can you repeat that,</p> <p>24 John?</p> <p>25 Q. Sure.</p>	<p>Page 71</p> <p>1 N. Dondero</p> <p>2 At any time prior to the petition</p> <p>3 date, did you or Dugaboy ever know whether</p> <p>4 the value of Highland's interest in MGM</p> <p>5 exceeded the cost that it paid to acquire</p> <p>6 that interest?</p> <p>7 A. We didn't know.</p> <p>8 Q. Did you or Dugaboy ever ask</p> <p>9 anybody prior to the petition date whether</p> <p>10 Highland's cost to acquire its interest in</p> <p>11 MGM was more or less than the value?</p> <p>12 A. No, we never made that inquiry.</p> <p>13 Q. Now do you know the nature of the</p> <p>14 MGM business?</p> <p>15 A. The movie theater and video</p> <p>16 library, that type.</p> <p>17 Q. Do you know anything else about</p> <p>18 the nature of MGM's business other than</p> <p>19 that?</p> <p>20 A. No.</p> <p>21 Q. At any time prior to the petition</p> <p>22 date, did you or Dugaboy do any due</p> <p>23 diligence to try to ascertain the value of</p> <p>24 MGM?</p> <p>25 A. Prior to the petition date?</p>
<p>Page 72</p> <p>1 N. Dondero</p> <p>2 Q. Yes.</p> <p>3 A. No.</p> <p>4 Q. All right. I'm going to ask</p> <p>5 similar questions with respect to</p> <p>6 Cornerstone.</p> <p>7 Cornerstone is one of the</p> <p>8 portfolio companies that you identified</p> <p>9 earlier, correct?</p> <p>10 A. Yes.</p> <p>11 Q. And did you learn from Jim that</p> <p>12 Cornerstone was one of Highland's portfolio</p> <p>13 companies prior to the petition date?</p> <p>14 A. I believe that is correct.</p> <p>15 Q. Do you have any other source of</p> <p>16 information for that other than your</p> <p>17 brother?</p> <p>18 A. Not that I remember.</p> <p>19 Q. At any time prior to the petition</p> <p>20 date, did you or Dugaboy have an</p> <p>21 understanding as to the nature of</p> <p>22 Highland's interest in Cornerstone?</p> <p>23 A. No.</p> <p>24 Q. At any time prior to the petition</p> <p>25 date, did you or Dugaboy ask anybody what</p>	<p>Page 73</p> <p>1 N. Dondero</p> <p>2 the nature of Highland's interest was in</p> <p>3 Cornerstone?</p> <p>4 A. Not that I recall.</p> <p>5 Q. Prior to the petition date, did</p> <p>6 you or Dugaboy make any effort to try to</p> <p>7 ascertain the nature of Highland's interest</p> <p>8 in Cornerstone?</p> <p>9 A. Not that I remember.</p> <p>10 Q. Prior to the petition date, did</p> <p>11 you or Dugaboy know how much Highland paid</p> <p>12 to acquire its interest in Cornerstone?</p> <p>13 A. No.</p> <p>14 Q. Prior to the petition date, did</p> <p>15 you or Dugaboy ever ask anybody what</p> <p>16 Highland's cost was to acquire its interest</p> <p>17 in Cornerstone?</p> <p>18 A. Not that I remember.</p> <p>19 Q. Prior to the petition date, did</p> <p>20 you or Dugaboy ever make any effort to try</p> <p>21 to ascertain how much Highland paid to</p> <p>22 acquire its interest in Cornerstone?</p> <p>23 A. No.</p> <p>24 Q. Do you know what Cornerstone --</p> <p>25 do you know the nature of Cornerstone's</p>

<p>Page 74</p> <p>1 N. Dondero</p> <p>2 business?</p> <p>3 A. I do not.</p> <p>4 Q. Did you ever ask anybody what the</p> <p>5 nature of Comerstone's business was?</p> <p>6 A. No.</p> <p>7 Q. Did you ever make any effort –</p> <p>8 withdrawn.</p> <p>9 Did you or Dugaboy ever make any</p> <p>10 effort to try to determine the nature of</p> <p>11 Comerstone's business?</p> <p>12 A. Not that I recall.</p> <p>13 Q. Did you or Dugaboy know the value</p> <p>14 of Highland's interest in Comerstone prior</p> <p>15 to the petition date?</p> <p>16 A. We did not.</p> <p>17 Q. Did you or Dugaboy ever ask</p> <p>18 anybody prior to the petition date what the</p> <p>19 value of Highland's interest in Comerstone</p> <p>20 was?</p> <p>21 A. Not that I remember.</p> <p>22 Q. Do you remember whether you or</p> <p>23 Dugaboy made any effort prior to the</p> <p>24 petition date to try to ascertain the value</p> <p>25 of Highland's interest in Comerstone?</p>	<p>Page 75</p> <p>1 N. Dondero</p> <p>2 A. I don't believe so.</p> <p>3 Q. Have you heard of a company</p> <p>4 called Trussway?</p> <p>5 A. Yes.</p> <p>6 Q. Do you know the nature of</p> <p>7 Trussway's business?</p> <p>8 A. I do not.</p> <p>9 Q. Did you ever ask anybody what the</p> <p>10 nature of Trussway's business was?</p> <p>11 A. No, sir.</p> <p>12 Q. Did you or Dugaboy make any</p> <p>13 effort at any time prior to the petition</p> <p>14 date to try to understand the nature of</p> <p>15 Trussway's business?</p> <p>16 A. I don't believe so.</p> <p>17 Q. Did you or Dugaboy make any</p> <p>18 effort prior to the petition date to</p> <p>19 understand the financial condition of MGM?</p> <p>20 A. Of MGM? I'm sorry. I thought we</p> <p>21 were talking about Trussway. We're going</p> <p>22 back to MGM?</p> <p>23 Q. We were. I'm sorry. It's a new</p> <p>24 question. I'm just going to tick the box.</p> <p>25 A. Oh, okay. I'm sorry. I was a</p>
<p>Page 76</p> <p>1 N. Dondero</p> <p>2 little slow on the switch.</p> <p>3 Q. That's okay.</p> <p>4 A. Can you repeat the question?</p> <p>5 Q. Sure.</p> <p>6 Did you or Dugaboy make any</p> <p>7 effort prior to the petition date to assess</p> <p>8 MGM's financial condition?</p> <p>9 A. Not that I recall.</p> <p>10 Q. Did you or Dugaboy make any</p> <p>11 effort prior to the petition date to try to</p> <p>12 understand the financial condition of</p> <p>13 Comerstone?</p> <p>14 A. Not that I recall.</p> <p>15 Q. Did you or Dugaboy prior to the</p> <p>16 petition date make any effort to try to</p> <p>17 understand the financial condition of</p> <p>18 Trussway?</p> <p>19 A. No, not that I recall.</p> <p>20 Q. Is it your understanding that</p> <p>21 Trussway was one of the portfolio</p> <p>22 companies, as you defined it earlier?</p> <p>23 A. Yes.</p> <p>24 Q. And is that understanding based</p> <p>25 solely on information that you received</p>	<p>Page 77</p> <p>1 N. Dondero</p> <p>2 from your brother?</p> <p>3 A. Yes. Yes.</p> <p>4 Q. Okay. At any time prior to the</p> <p>5 petition date, did you or Dugaboy have an</p> <p>6 understanding as to the nature of</p> <p>7 Highland's interest in Trussway?</p> <p>8 A. I don't know.</p> <p>9 Q. Do you recall whether you or</p> <p>10 Dugaboy ever had an understanding prior to</p> <p>11 the petition date concerning the nature of</p> <p>12 Highland's interest in Trussway?</p> <p>13 A. I don't know.</p> <p>14 Q. Do you recall that either you or</p> <p>15 Dugaboy ever asked anybody what the nature</p> <p>16 of Highland's interest in Trussway was</p> <p>17 prior to the petition date?</p> <p>18 A. I don't believe so.</p> <p>19 Q. Prior to the petition date, did</p> <p>20 you or Dugaboy make any effort to try to</p> <p>21 determine the nature of Highland's interest</p> <p>22 in Trussway?</p> <p>23 A. I don't believe so.</p> <p>24 Q. Prior to the petition date, did</p> <p>25 you or Dugaboy know Highland's cost to</p>

<p>Page 78</p> <p>1 N. Dondero</p> <p>2 acquire its interest in Trussway?</p> <p>3 A. We did not.</p> <p>4 Q. Prior to the petition date, did</p> <p>5 you or Dugaboy ever ask anybody what</p> <p>6 Highland's cost was to acquire its interest</p> <p>7 in Trussway?</p> <p>8 A. Not that I recall.</p> <p>9 Q. Prior to the petition date, did</p> <p>10 you or Dugaboy make any effort to try to</p> <p>11 ascertain what Highland's cost was to</p> <p>12 acquire its interest in Trussway?</p> <p>13 A. Not that I remember.</p> <p>14 Q. Did you or Dugaboy know the value</p> <p>15 of Highland's interest in Trussway prior to</p> <p>16 the petition date?</p> <p>17 A. Not that I am aware of.</p> <p>18 Q. Prior to the petition date, did</p> <p>19 you or Dugaboy ever ask anybody what the</p> <p>20 value of Highland's interest was in</p> <p>21 Trussway?</p> <p>22 A. I don't think so.</p> <p>23 Q. Do you know whether you or</p> <p>24 Dugaboy prior to the petition date made any</p> <p>25 effort to try to ascertain the value of</p>	<p>Page 79</p> <p>1 N. Dondero</p> <p>2 Highland's interest in Trussway?</p> <p>3 A. I don't believe so.</p> <p>4 Q. Did you or Dugaboy know prior to</p> <p>5 the petition date whether the value of</p> <p>6 Highland's interest in Trussway was more or</p> <p>7 less than its cost?</p> <p>8 A. I do not know.</p> <p>9 Q. Did you ever ask anybody –</p> <p>10 withdrawn.</p> <p>11 Did you or Dugaboy ever ask</p> <p>12 anybody prior to the petition date whether</p> <p>13 the value of Highland's interest in</p> <p>14 Trussway was more or less than its cost?</p> <p>15 A. I don't think so.</p> <p>16 Q. Did you or Dugaboy make any</p> <p>17 attempt prior to the petition date to</p> <p>18 determine whether the value of Highland's</p> <p>19 interest in Trussway was more or less than</p> <p>20 its cost?</p> <p>21 A. I don't think so.</p> <p>22 Q. Okay. I apologize if I asked</p> <p>23 these questions already. I think I may</p> <p>24 have forgotten them, but I'm just going to</p> <p>25 ask just those last couple of questions –</p>
<p>Page 80</p> <p>1 N. Dondero</p> <p>2 MS. DEITSCH-PEREZ: All of them.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. – related to Cornerstone.</p> <p>5 A. Okay.</p> <p>6 Q. Did you or Dugaboy know prior to</p> <p>7 the petition date whether the value of</p> <p>8 Highland's interest in Cornerstone was more</p> <p>9 or less than its cost?</p> <p>10 A. I don't know if we knew.</p> <p>11 Q. Did you or Dugaboy ask anybody</p> <p>12 prior to the petition date whether the</p> <p>13 value of Highland's interest in Cornerstone</p> <p>14 was more or less than its cost?</p> <p>15 A. I don't recall.</p> <p>16 Q. Do you know whether you or</p> <p>17 Dugaboy made any effort prior to the</p> <p>18 petition date to determine whether</p> <p>19 Highland's – whether the value of</p> <p>20 Highland's interest in Cornerstone was more</p> <p>21 or less than its cost?</p> <p>22 A. I don't remember.</p> <p>23 Q. Okay. I'm going to shift gears</p> <p>24 now to talk about loans.</p> <p>25 A. Okay.</p>	<p>Page 81</p> <p>1 N. Dondero</p> <p>2 Q. All right. You're aware that</p> <p>3 from time to time, Highland provided loans</p> <p>4 to certain of its officers and employees,</p> <p>5 right?</p> <p>6 A. I am.</p> <p>7 Q. And you're aware that in exchange</p> <p>8 for the loans from Highland, the officers</p> <p>9 and employees gave Highland promissory</p> <p>10 notes?</p> <p>11 A. Correct.</p> <p>12 Q. Are you aware of any loan that</p> <p>13 Highland ever gave to an officer or</p> <p>14 employee where the officer or employee</p> <p>15 failed to give a promissory note in return?</p> <p>16 MS. DEITSCH-PEREZ: Object to the</p> <p>17 form.</p> <p>18 A. John, I'm sorry. Can you repeat</p> <p>19 the question, please?</p> <p>20 Q. Yeah.</p> <p>21 I just want to know if you are</p> <p>22 aware of any instance where Highland gave a</p> <p>23 loan to an officer or an employee where the</p> <p>24 officer or employee failed to give Highland</p> <p>25 a promissory note in exchange?</p>

<p>Page 82</p> <p>1 N. Dondero</p> <p>2 MS. DEITSCH-PEREZ: Object to the</p> <p>3 form.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. You can answer.</p> <p>6 A. I am not aware of any.</p> <p>7 Q. Okay. Do you have a general</p> <p>8 understanding of what a promissory note is?</p> <p>9 A. A promise to pay.</p> <p>10 Q. Okay. Is it a promise to pay a</p> <p>11 sum certain?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form.</p> <p>14 MR. MORRIS: Withdrawn.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Do you understand that a</p> <p>17 promissory note is a promise to pay a</p> <p>18 specified amount at some point in the</p> <p>19 future?</p> <p>20 MS. DEITSCH-PEREZ: Object to the</p> <p>21 form.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. You can answer.</p> <p>24 A. That was my understanding, John.</p> <p>25 Q. Okay. Prior to the petition</p>	<p>Page 83</p> <p>1 N. Dondero</p> <p>2 date, did you ever see any promissory note</p> <p>3 that was signed by an officer or employee</p> <p>4 of Highland?</p> <p>5 A. I'm not sure.</p> <p>6 Q. Do you have any recollection --</p> <p>7 do you have any recollection, as you sit</p> <p>8 here right now, of having seen a promissory</p> <p>9 note that was signed by an officer or</p> <p>10 employee of Highland prior to the petition</p> <p>11 date?</p> <p>12 Withdrawn. That is not a good</p> <p>13 question?</p> <p>14 Prior to the petition date, did</p> <p>15 you see any promissory note that was signed</p> <p>16 by any officer or employee of Highland?</p> <p>17 A. I don't remember.</p> <p>18 Q. You don't have any recollection</p> <p>19 of that; is that fair?</p> <p>20 A. That's fair.</p> <p>21 Q. Do you know whether Dugaboy ever</p> <p>22 saw any promissory note prior to the</p> <p>23 petition date that had been signed by an</p> <p>24 officer or employee of Highland?</p> <p>25 A. I don't know.</p>
<p>Page 84</p> <p>1 N. Dondero</p> <p>2 Q. Prior to the petition date, did</p> <p>3 you or Dugaboy ever ask to see any</p> <p>4 promissory note that was executed by an</p> <p>5 officer or employee of Highland?</p> <p>6 MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8 A. I don't remember, John.</p> <p>9 Q. Okay. Do you know if Highland</p> <p>10 ever forgave any obligations under any</p> <p>11 promissory note that was issued by any</p> <p>12 Highland employee or officer?</p> <p>13 MS. DEITSCH-PEREZ: Objection.</p> <p>14 No foundation.</p> <p>15 A. I am not aware.</p> <p>16 Q. You're not aware of Highland ever</p> <p>17 forgiving any loan that it made to any</p> <p>18 officer or employee.</p> <p>19 Do I have that right?</p> <p>20 MS. DEITSCH-PEREZ: Object. No</p> <p>21 foundation.</p> <p>22 A. I'm not sure, John. I'm not</p> <p>23 sure.</p> <p>24 Q. Does Dugaboy have any knowledge</p> <p>25 concerning any loan that was given by</p>	<p>Page 85</p> <p>1 N. Dondero</p> <p>2 Highland to any of its officers or</p> <p>3 employees that was forgiven in whole or in</p> <p>4 part?</p> <p>5 A. I don't know.</p> <p>6 Q. Did you or Dugaboy ever ask</p> <p>7 anybody prior to the petition date whether</p> <p>8 Highland had ever forgiven any loan that it</p> <p>9 made to any officer or employee?</p> <p>10 A. I don't think so.</p> <p>11 Q. Did you or Dugaboy make any</p> <p>12 effort at any time prior to the petition</p> <p>13 date to determine whether Highland had ever</p> <p>14 forgiven in whole or in part any loan that</p> <p>15 it made to any of its officers or</p> <p>16 employees?</p> <p>17 A. Did I make any inquiries? Is</p> <p>18 that what you're asking?</p> <p>19 Q. Did you make any effort to try to</p> <p>20 answer -- to try to figure that out?</p> <p>21 A. To determine one way or the</p> <p>22 other?</p> <p>23 Q. Correct.</p> <p>24 A. Not that I recall, no.</p> <p>25 Q. Did anybody ever tell you --</p>

<p>Page 86</p> <p>1 N. Dondero</p> <p>2 withdrawn.</p> <p>3 Did anybody ever give you or</p> <p>4 Dugaboy any information concerning any loan</p> <p>5 that Highland ever made to any of its</p> <p>6 employees or officers that was forgiven in</p> <p>7 whole or in part?</p> <p>8 A. I was aware that that was a</p> <p>9 common practice at Highland.</p> <p>10 Q. Okay. And how did you become</p> <p>11 aware of that common practice?</p> <p>12 A. In conversations with Jim.</p> <p>13 Q. Was there any other source of</p> <p>14 information concerning that common practice</p> <p>15 that he described for you – withdrawn.</p> <p>16 Did you have any other source of</p> <p>17 information concerning the common practice</p> <p>18 that you just mentioned?</p> <p>19 A. Did I have any –</p> <p>20 Q. Any other source – yeah.</p> <p>21 Did you have any other source of</p> <p>22 information other than your brother</p> <p>23 concerning the common practice that you</p> <p>24 just described?</p> <p>25 A. I'm not sure if I spoke to other</p>	<p>Page 87</p> <p>1 N. Dondero</p> <p>2 people in addition to Jim. I don't know.</p> <p>3 Q. Can you identify anybody that you</p> <p>4 recall speaking to concerning the practice</p> <p>5 that your brother told you that Highland</p> <p>6 had of forgiving loans to employees and</p> <p>7 officers?</p> <p>8 A. I don't remember who it was at</p> <p>9 Highland that I have spoken to about that</p> <p>10 or overheard a conversation.</p> <p>11 Q. Do you recall when the</p> <p>12 conversation took place?</p> <p>13 A. No, I don't.</p> <p>14 Q. Do you recall where the</p> <p>15 conversation took place?</p> <p>16 A. No, no, I don't. I believe it</p> <p>17 was a phone conversation.</p> <p>18 Q. Can you identify any person who</p> <p>19 participated in the phone conversation?</p> <p>20 A. Jim was one of the parties.</p> <p>21 Q. Do you recall anybody else?</p> <p>22 A. I do not.</p> <p>23 Q. Do you recall if the conversation</p> <p>24 took place before or after the petition</p> <p>25 date?</p>
<p>Page 88</p> <p>1 N. Dondero</p> <p>2 A. I don't know.</p> <p>3 Q. So it might have happened before;</p> <p>4 it might have happened after.</p> <p>5 Is that fair?</p> <p>6 A. Correct.</p> <p>7 Q. Do you remember the substance of</p> <p>8 the conversation at all?</p> <p>9 A. Not in detail.</p> <p>10 Q. Can you describe for me</p> <p>11 everything you recall about the</p> <p>12 conversation you have in your mind</p> <p>13 concerning the practice that Highland had</p> <p>14 of forgiving loans to officers and</p> <p>15 employees?</p> <p>16 A. I am aware that it was common</p> <p>17 practice, or at least I believed it was</p> <p>18 common practice at Highland.</p> <p>19 Q. Do you have any other information</p> <p>20 that you can share with me that you learned</p> <p>21 concerning the practice other than the fact</p> <p>22 that it existed?</p> <p>23 A. Not at this time.</p> <p>24 Q. Can you identify a single officer</p> <p>25 or employee who had a loan forgiven?</p>	<p>Page 89</p> <p>1 N. Dondero</p> <p>2 A. Not off the top of my head, no.</p> <p>3 Q. Did you or Dugaboy ever know the</p> <p>4 identity of any officer or employee of</p> <p>5 Highland who had a loan forgiven?</p> <p>6 MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8 A. Again, John, not off the top of</p> <p>9 my head.</p> <p>10 Q. Did you ever see anything in</p> <p>11 writing that concerned or related to the</p> <p>12 practice that your brother described for</p> <p>13 you?</p> <p>14 A. Not that I remember, no.</p> <p>15 Q. Did you ever ask to see any</p> <p>16 documents that concerned or related to the</p> <p>17 practice that your brother described for</p> <p>18 you?</p> <p>19 A. Again, I don't recall, John.</p> <p>20 Q. Did Dugaboy ever ask for</p> <p>21 information concerning Highland's practice</p> <p>22 of forgiving loans?</p> <p>23 A. No, I don't believe so.</p> <p>24 Q. Did you or Highland ever know</p> <p>25 about the number of loans that Highland</p>



<p>Page 90</p> <p>1 N. Dondero</p> <p>2 made to employees or officers that Highland</p> <p>3 forgave?</p> <p>4 A. I'm sorry, did me or Highland</p> <p>5 know?</p> <p>6 Q. I apologize. If that's what I</p> <p>7 said, I'm mistaken. Thank you.</p> <p>8 Did you or Dugaboy – did you or</p> <p>9 Dugaboy ever know how many loans were</p> <p>10 forgiven?</p> <p>11 A. A specific number, no.</p> <p>12 Q. Did you or Dugaboy know – ever</p> <p>13 know the amount, the face amount of the</p> <p>14 loans that were forgiven?</p> <p>15 A. No, not that I recall.</p> <p>16 Q. Did you or Dugaboy ever know the</p> <p>17 year in which Highland ever forgave any</p> <p>18 loan to any officer or employee?</p> <p>19 A. Not that I recall.</p> <p>20 Q. Okay. Do you know Mark Okada?</p> <p>21 A. I do.</p> <p>22 Q. Have you ever met him?</p> <p>23 A. I have.</p> <p>24 Q. Okay. Do you know whether</p> <p>25 Highland ever gave a loan to Mr. Okada that</p>	<p>Page 91</p> <p>1 N. Dondero</p> <p>2 was the subject of a promissory note?</p> <p>3 A. Specifically, no.</p> <p>4 Q. Did you ever ask anybody whether</p> <p>5 Highland had ever made a loan to Mr. Okada</p> <p>6 that was backed by a promissory note?</p> <p>7 A. I never asked.</p> <p>8 Q. Do you or Dugaboy know whether</p> <p>9 Highland ever forgave any loan that was</p> <p>10 ever made to Mr. Okada?</p> <p>11 A. I am not aware.</p> <p>12 Q. Did you or Dugaboy ever ask</p> <p>13 anybody whether Highland had ever made a</p> <p>14 loan to Mr. Okada that Highland forgave?</p> <p>15 A. No.</p> <p>16 Q. Did you or Dugaboy ever make any</p> <p>17 effort to ascertain whether Highland had</p> <p>18 ever forgiven any loan that it had made to</p> <p>19 Mr. Okada?</p> <p>20 A. I'm sorry. The beginning part of</p> <p>21 that, John? Did I –</p> <p>22 Q. Sure.</p> <p>23 Did you or Dugaboy ever make any</p> <p>24 effort to figure out if Highland had ever</p> <p>25 forgiven any loan that it had made to</p>
<p>Page 92</p> <p>1 N. Dondero</p> <p>2 Mr. Okada?</p> <p>3 A. No, sir.</p> <p>4 Q. You're aware that Highland loaned</p> <p>5 money to your brother, correct?</p> <p>6 A. Correct.</p> <p>7 Q. Do you know how many loans</p> <p>8 Highland made to your brother?</p> <p>9 A. Over what period of time, John?</p> <p>10 Q. From the time the company was</p> <p>11 formed.</p> <p>12 A. Okay. There's more – I'm not</p> <p>13 sure how to answer that, John.</p> <p>14 Q. Okay. That's fair.</p> <p>15 A. Can you be more specific with the</p> <p>16 time frame, please?</p> <p>17 Q. You bet.</p> <p>18 Let's take it for the ten years</p> <p>19 prior to the petition date. So let's go</p> <p>20 back to 2009.</p> <p>21 From 2009 to 2019 –</p> <p>22 A. Okay.</p> <p>23 Q. – do you know how many loans</p> <p>24 Highland made to your brother?</p> <p>25 A. To just Jim or to Jim and his</p>	<p>Page 93</p> <p>1 N. Dondero</p> <p>2 entities?</p> <p>3 Q. Just to Jim.</p> <p>4 A. I don't know a specific number,</p> <p>5 no.</p> <p>6 Q. Did you or Dugaboy ever ask</p> <p>7 anybody how many loans Highland made to Jim</p> <p>8 in the ten-year period prior to the</p> <p>9 petition date?</p> <p>10 A. No. We never asked.</p> <p>11 Q. Did you or Dugaboy ever ask</p> <p>12 anybody how many loans Highland made to Jim</p> <p>13 during any time period?</p> <p>14 A. No, I don't believe so.</p> <p>15 Q. Did you or Dugaboy ever make any</p> <p>16 effort to try to ascertain the number of</p> <p>17 loans that Highland made to your brother</p> <p>18 during any particular time period?</p> <p>19 A. Not that I recall.</p> <p>20 Q. Do you know if your brother ever</p> <p>21 paid Highland back the principal amount</p> <p>22 due, plus interest under any loan that he</p> <p>23 had obtained from Highland?</p> <p>24 A. In its entirety?</p> <p>25 Q. Yes.</p>

<p>Page 94</p> <p>1 N. Dondero</p> <p>2 A. Or a portion?</p> <p>3 What are you speaking of?</p> <p>4 Q. Let's start with the entirety,</p> <p>5 and I'll ask the question again.</p> <p>6 Are you and Dugaboy aware of any</p> <p>7 loan that your brother obtained from</p> <p>8 Highland that he paid back in full, plus</p> <p>9 interest?</p> <p>10 A. I am not sure.</p> <p>11 Q. Did you or Dugaboy ever ask</p> <p>12 anybody whether your brother had ever</p> <p>13 obtained a loan from Highland that he paid</p> <p>14 back in full, plus interest?</p> <p>15 A. I don't think so.</p> <p>16 Q. Did you or Dugaboy ever make any</p> <p>17 effort prior to the petition date to</p> <p>18 determine whether or not Highland had –</p> <p>19 withdrawn.</p> <p>20 Did you and Dugaboy make any</p> <p>21 effort prior to the petition date to</p> <p>22 determine whether your brother had ever</p> <p>23 paid back all principal and interest due on</p> <p>24 any loan that he had obtained from</p> <p>25 Highland?</p>	<p>Page 95</p> <p>1 N. Dondero</p> <p>2 A. Not that I recall, John.</p> <p>3 Q. Prior to the petition date, did</p> <p>4 you or Dugaboy ever see any promissory note</p> <p>5 that your brother signed?</p> <p>6 A. I'm not sure. I don't know.</p> <p>7 Q. Prior to the petition date, did</p> <p>8 you or Dugaboy ever ask anybody to see any</p> <p>9 promissory note that your brother had</p> <p>10 signed in favor of Highland?</p> <p>11 A. I don't believe we asked.</p> <p>12 Q. Prior to the petition date, did</p> <p>13 you or Dugaboy ever make any effort to try</p> <p>14 to obtain any promissory note that your</p> <p>15 brother signed in favor of Highland?</p> <p>16 A. No, I don't think so.</p> <p>17 Q. Do you know how many promissory</p> <p>18 notes your brother signed in favor of</p> <p>19 Highland?</p> <p>20 A. Totally? No.</p> <p>21 Q. Okay. I am going to ask similar</p> <p>22 questions now regarding the corporate</p> <p>23 entities.</p> <p>24 Do you understand that Highland</p> <p>25 has what are referred to as affiliates?</p>
<p>Page 96</p> <p>1 N. Dondero</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And do you have an</p> <p>4 understanding of the term "affiliates" as</p> <p>5 it relates to Highland?</p> <p>6 A. Yes.</p> <p>7 Q. What's your understanding of the</p> <p>8 term "affiliates" as it relates to</p> <p>9 Highland?</p> <p>10 A. Companies that are associated</p> <p>11 with Highland.</p> <p>12 Q. And what does it mean to be</p> <p>13 associated with Highland?</p> <p>14 MS. DEITSCH-PEREZ: Object to the</p> <p>15 form.</p> <p>16 MR. MORRIS: Withdrawn.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. What do you mean when you say</p> <p>19 that affiliated companies are those that</p> <p>20 are associated with Highland?</p> <p>21 A. They're under the Highland</p> <p>22 umbrella.</p> <p>23 Q. Is it your understanding that</p> <p>24 affiliated companies are controlled by your</p> <p>25 brother?</p>	<p>Page 97</p> <p>1 N. Dondero</p> <p>2 MS. DEITSCH-PEREZ: Object to the</p> <p>3 form.</p> <p>4 A. I'm sorry, John?</p> <p>5 MS. DEITSCH-PEREZ: There's some</p> <p>6 noise. We can hear somebody talking.</p> <p>7 Someone probably needs to mute.</p> <p>8 MR. MORRIS: Give me one second.</p> <p>9 It might be me. We'll see.</p> <p>10 I apologize for that if it was me</p> <p>11 anyway.</p> <p>12 Can I have last question read</p> <p>13 back please.</p> <p>14 THE REPORTER: Sure.</p> <p>15 (Question was read back as</p> <p>16 follows:</p> <p>17 "QUESTION: Is it your</p> <p>18 understanding that affiliated companies</p> <p>19 are controlled by your brother?")</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And are you aware – with</p> <p>22 that understanding of the term if</p> <p>23 "affiliates," are you aware that from time</p> <p>24 to time, Highland provided loans to certain</p> <p>25 of its affiliates?</p>

<p>Page 98</p> <p>1 N. Dondero</p> <p>2 A. I'm not sure. Of Highland loans?</p> <p>3 Okay. I'm not sure, John.</p> <p>4 Q. Prior to the petition date, did</p> <p>5 you or Dugaboy know whether Highland ever</p> <p>6 made a loan to an affiliate, as you've</p> <p>7 defined it?</p> <p>8 A. Yes, there were loans made.</p> <p>9 Q. Okay. And how did you learn that</p> <p>10 there were loans made by Highland to its</p> <p>11 affiliates?</p> <p>12 A. Jim and I had discussed the loans</p> <p>13 that were made.</p> <p>14 Are we talking about certain</p> <p>15 ones, John?</p> <p>16 Q. I'm just talking generally at the</p> <p>17 moment.</p> <p>18 How did you learn whatever</p> <p>19 information you have, and we'll get into</p> <p>20 the details, but how did you learn that</p> <p>21 Highland made loans to affiliates?</p> <p>22 A. From Jim.</p> <p>23 Q. Okay. Did you have any source of</p> <p>24 information other than your brother on the</p> <p>25 question of whether Highland made loans to</p>	<p>Page 99</p> <p>1 N. Dondero</p> <p>2 affiliates?</p> <p>3 A. Not that I'm aware of.</p> <p>4 Q. Were you and Dugaboy generally</p> <p>5 aware that when Highland made loans to its</p> <p>6 affiliates, the affiliates gave Highland</p> <p>7 promissory notes in return?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And how did you learn</p> <p>10 that?</p> <p>11 A. In conversation.</p> <p>12 Q. And would those be conversations</p> <p>13 that you had with Jim?</p> <p>14 A. Correct.</p> <p>15 Q. Did you have conversations with</p> <p>16 anybody else on the topic of whether or not</p> <p>17 the affiliates gave Highland promissory</p> <p>18 notes in exchange for loans?</p> <p>19 A. Not that I recall.</p> <p>20 Q. Prior to the petition date, did</p> <p>21 you or Dugaboy ever see a promissory note</p> <p>22 that was signed on behalf of any affiliate?</p> <p>23 A. I don't recall.</p> <p>24 Q. Prior to the petition date, did</p> <p>25 you or Dugaboy ever ask anybody to see any</p>
<p>Page 100</p> <p>1 N. Dondero</p> <p>2 promissory note that was signed in favor of</p> <p>3 Highland by one of its affiliates?</p> <p>4 A. Not that I recall, John.</p> <p>5 Q. Prior to the petition date, did</p> <p>6 you or Dugaboy make any effort to try to</p> <p>7 obtain any promissory note that was</p> <p>8 executed by a Highland affiliate in favor</p> <p>9 of Highland?</p> <p>10 A. I don't believe so.</p> <p>11 Q. Do you know if Highland ever</p> <p>12 forgave any obligations under any</p> <p>13 promissory note that was signed on behalf</p> <p>14 of any affiliate?</p> <p>15 A. I have no idea.</p> <p>16 Q. Did you or Dugaboy ever ask</p> <p>17 anybody whether Highland had ever forgiven</p> <p>18 any loan that was given to an affiliate?</p> <p>19 A. Did we – I'm sorry, John, can</p> <p>20 you repeat the question, please?</p> <p>21 Q. Yes.</p> <p>22 Did you or Dugaboy ever ask</p> <p>23 anybody prior to the petition date whether</p> <p>24 Highland had ever forgiven in whole or in</p> <p>25 part any loan that it made to an affiliate?</p>	<p>Page 101</p> <p>1 N. Dondero</p> <p>2 A. No, because it was my assumption</p> <p>3 that that was common practice.</p> <p>4 Q. Okay. And what was that</p> <p>5 assumption based on?</p> <p>6 A. Conversations that I either had</p> <p>7 with Jim or overheard.</p> <p>8 Q. Okay. Do you have anything to</p> <p>9 add about the practice that you haven't</p> <p>10 already testified to?</p> <p>11 Withdrawn.</p> <p>12 Does the practice that you're</p> <p>13 referring to, is that the same practice</p> <p>14 that you have identified earlier with</p> <p>15 respect to loans that were made to officers</p> <p>16 and employees?</p> <p>17 A. That's correct, John.</p> <p>18 Q. Okay. So did you have any source</p> <p>19 of information other than your brother that</p> <p>20 you can identify right now concerning the</p> <p>21 practice of forgiving loans to affiliates?</p> <p>22 A. Not at this time.</p> <p>23 Q. Can you identify any loan that</p> <p>24 Highland ever made to an affiliate that was</p> <p>25 forgiven?</p>

<p>Page 102</p> <p>1 N. Dondero</p> <p>2 A. Not that I recall.</p> <p>3 Q. Did you or Dugaboy ever ask</p> <p>4 anybody to identify any loan that it ever</p> <p>5 made to an affiliate that was forgiven in</p> <p>6 whole or in part?</p> <p>7 A. Can you restate that, John?</p> <p>8 Q. Sure.</p> <p>9 Did you or Dugaboy ever ask</p> <p>10 anybody to identify a loan that was made by</p> <p>11 Highland to an affiliate that was forgiven</p> <p>12 in whole or in part?</p> <p>13 A. Not that I remember.</p> <p>14 Q. Can you or Dugaboy identify today</p> <p>15 any affiliate that obtained a loan from</p> <p>16 Highland that Highland forgave?</p> <p>17 A. Not that I know of.</p> <p>18 Q. Did you or Dugaboy ever take any</p> <p>19 steps to confirm what your brother told you</p> <p>20 about the practice of forgiving loans?</p> <p>21 A. Did we take any steps?</p> <p>22 Q. Did you do anything?</p> <p>23 A. Not that I am aware of, no.</p> <p>24 Q. Did you ever see any document</p> <p>25 that concerned or related to the practice</p>	<p>Page 103</p> <p>1 N. Dondero</p> <p>2 your brother described for you whereby</p> <p>3 Highland forgave loans to affiliates?</p> <p>4 A. I do not recall, John, no.</p> <p>5 Q. Did you ever ask to see any</p> <p>6 documents that reflected the practice your</p> <p>7 brother described?</p> <p>8 A. I never asked.</p> <p>9 Q. Give me one second.</p> <p>10 Have you ever heard of an entity</p> <p>11 called Highland Capital Management Services</p> <p>12 Inc.?</p> <p>13 A. Yes.</p> <p>14 Q. Can we refer to that entity as</p> <p>15 HCMS?</p> <p>16 A. Okay.</p> <p>17 Q. Is HCMS an affiliate –</p> <p>18 withdrawn.</p> <p>19 Did you and Dugaboy understand</p> <p>20 that HCMS was an affiliate of Highland's</p> <p>21 prior to the petition date?</p> <p>22 A. Yes.</p> <p>23 Q. And how did you come to</p> <p>24 understand that HCMS was an affiliate of</p> <p>25 Highland prior to the petition date?</p>
<p>Page 104</p> <p>1 N. Dondero</p> <p>2 A. Because it's another one of Jim's</p> <p>3 companies.</p> <p>4 Q. And how did you learn that that</p> <p>5 was another one of Jim's companies?</p> <p>6 A. I don't remember how I learned</p> <p>7 it. It's under the Highland umbrella.</p> <p>8 Q. And when you say that it's one of</p> <p>9 "Jim's companies," what do you mean by</p> <p>10 that?</p> <p>11 A. The beneficial owner.</p> <p>12 Q. And how did you learn that your</p> <p>13 brother was the beneficial owner of HCMS?</p> <p>14 MS. DEITSCH-PEREZ: Object to the</p> <p>15 form. That's not what she said. She</p> <p>16 said he is a beneficiary owner –</p> <p>17 MR. MORRIS: You can object to</p> <p>18 the question. I appreciate it.</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. And you can answer it.</p> <p>21 MS. DEITSCH-PEREZ: Don't</p> <p>22 misstate what she said, please.</p> <p>23 MR. MORRIS: All you do is get to</p> <p>24 object to the question, please. Don't</p> <p>25 coach the witness.</p>	<p>Page 105</p> <p>1 N. Dondero</p> <p>2 MS. DEITSCH-PEREZ: I'm not</p> <p>3 coaching the witness.</p> <p>4 You want to have the court</p> <p>5 reporter read it back.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Can you please answer my</p> <p>8 question, please?</p> <p>9 A. How did I learn that Jim was a</p> <p>10 beneficial owner –</p> <p>11 Q. Sure.</p> <p>12 A. – of the company?</p> <p>13 I would assume from Jim.</p> <p>14 Q. Okay. Do you have any reason to</p> <p>15 believe your source of information was</p> <p>16 anybody other than Jim?</p> <p>17 A. I don't know, John.</p> <p>18 Q. Okay. Do you know the nature of</p> <p>19 HCMS's business?</p> <p>20 A. No.</p> <p>21 Q. Did you or Dugaboy ever ask</p> <p>22 anybody what the nature of HCMS's business</p> <p>23 was?</p> <p>24 A. No, not that I recall.</p> <p>25 Q. Did you or Dugaboy ever make any</p>

<p>Page 106</p> <p>1 N. Dondero</p> <p>2 effort to determine what HCMS's business</p> <p>3 was?</p> <p>4 A. Not that I recall.</p> <p>5 Q. Did you or Dugaboy ever know –</p> <p>6 withdrawn.</p> <p>7 Did you or Dugaboy ever have any</p> <p>8 information concerning HCMS's financial</p> <p>9 condition?</p> <p>10 A. No, not that I'm aware of.</p> <p>11 Q. Did you or Dugaboy ever ask</p> <p>12 anybody for information concerning HCMS's</p> <p>13 financial condition?</p> <p>14 A. No.</p> <p>15 Q. Did you or Dugaboy ever make any</p> <p>16 independent effort to try to determine what</p> <p>17 HCMS's financial condition was?</p> <p>18 A. Not that I recall.</p> <p>19 Q. Do you or Dugaboy know whether</p> <p>20 any agreements exist between HCMS and</p> <p>21 Highland other than any promissory notes?</p> <p>22 A. I don't know.</p> <p>23 Q. Did you or Dugaboy ever ask</p> <p>24 anybody whether any agreements existed</p> <p>25 between Highland and HCMS other than</p>	<p>Page 107</p> <p>1 N. Dondero</p> <p>2 promissory notes?</p> <p>3 A. I don't know. No, I don't</p> <p>4 believe so.</p> <p>5 Q. I appreciate your patience. I</p> <p>6 do.</p> <p>7 A. That's okay.</p> <p>8 Q. Did you or Dugaboy ever make any</p> <p>9 effort to try to learn whether any</p> <p>10 agreements existed between Highland and</p> <p>11 HCMS other than promissory notes?</p> <p>12 A. I don't believe so.</p> <p>13 Q. Did you or Dugaboy know prior to</p> <p>14 the petition date whether Highland ever</p> <p>15 provided any services to HCMS?</p> <p>16 A. I don't know.</p> <p>17 Q. Did you or Dugaboy ever ask</p> <p>18 anybody prior to the petition date whether</p> <p>19 Highland ever provided any services to</p> <p>20 HCMS?</p> <p>21 A. I don't believe it was asked.</p> <p>22 Q. Did you or Dugaboy ever made any</p> <p>23 effort prior to the petition date to learn</p> <p>24 whether Highland provided any services to</p> <p>25 HCMS?</p>
<p>Page 108</p> <p>1 N. Dondero</p> <p>2 A. Not that I am aware of, John.</p> <p>3 Q. Do you know if HCMS – withdrawn.</p> <p>4 Did you or Dug – withdrawn.</p> <p>5 Did you or Dugaboy know prior to</p> <p>6 the petition date whether HCMS ever</p> <p>7 rendered any services to Highland?</p> <p>8 A. I wouldn't –</p> <p>9 MS. DEITSCH-PEREZ: Object to the</p> <p>10 form.</p> <p>11 A. I wouldn't know.</p> <p>12 MR. MORRIS: Can I have the</p> <p>13 question read back?</p> <p>14 THE REPORTER: Sure.</p> <p>15 (Question was read back as</p> <p>16 follows:</p> <p>17 "QUESTION: Did you or Dugaboy</p> <p>18 know prior to the petition date whether</p> <p>19 HCMS ever rendered any services to</p> <p>20 Highland?"</p> <p>21 "ANSWER: I wouldn't know.")</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. Did you or Dugaboy ever ask</p> <p>24 anybody prior to the petition date whether</p> <p>25 HCMS ever rendered any services to</p>	<p>Page 109</p> <p>1 N. Dondero</p> <p>2 Highland?</p> <p>3 A. I don't believe so, John.</p> <p>4 Q. Did you or Dugaboy make any</p> <p>5 effort prior to the petition date to</p> <p>6 determine whether HCMS ever rendered any</p> <p>7 services to Highland?</p> <p>8 A. I don't think so.</p> <p>9 Q. Do you know if Highland ever</p> <p>10 loaned any money to HCMS?</p> <p>11 MS. DEITSCH-PEREZ: Asked and</p> <p>12 answered.</p> <p>13 MR. MORRIS: You can answer.</p> <p>14 A. Oh, answer it again?</p> <p>15 Q. If I asked it, I apologize, but</p> <p>16 go ahead, yeah.</p> <p>17 MS. DEITSCH-PEREZ: I thought you</p> <p>18 asked about promissory notes. If I'm</p> <p>19 wrong, I apologize.</p> <p>20 MR. MORRIS: That's okay.</p> <p>21 A. Yeah, I'm sorry. Okay. So not</p> <p>22 including any notes?</p> <p>23 Q. Yeah, let me ask a different</p> <p>24 question. I'm not asking about promissory</p> <p>25 notes.</p>



<p>Page 110</p> <p>1 N. Dondero</p> <p>2 A. Okay.</p> <p>3 Q. I'm asking whether prior to the</p> <p>4 petition date, you or Dugaboy were aware of</p> <p>5 any loans that Highland made to HCMS?</p> <p>6 A. Okay. I'm aware of the ones that</p> <p>7 are in question.</p> <p>8 Are you speaking of others?</p> <p>9 Q. I am asking broadly at this time.</p> <p>10 Are you generally aware that</p> <p>11 Highland loaned –</p> <p>12 A. Yes.</p> <p>13 Q. – money to HCMS prior to the</p> <p>14 petition date?</p> <p>15 A. Yes, I am generally aware.</p> <p>16 Q. Okay. Did you and Dugaboy know</p> <p>17 how many loans Highland made to HCMS prior</p> <p>18 to the petition date?</p> <p>19 A. Yes, I believe.</p> <p>20 Q. And how many loans did Highland</p> <p>21 make to HCMS prior to the petition date, to</p> <p>22 the best of your knowledge?</p> <p>23 A. At least five.</p> <p>24 Q. And are those the loans that are</p> <p>25 reflected in the five promissory notes that</p>	<p>Page 111</p> <p>1 N. Dondero</p> <p>2 are the subject of the lawsuit against</p> <p>3 HCMS?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. Are you aware of any loans</p> <p>6 that Highland ever made to HCMS that are</p> <p>7 not subject to the lawsuit?</p> <p>8 A. I'm not – I'm not aware, John.</p> <p>9 Q. Did you ever ask – withdrawn.</p> <p>10 Did you or Dugaboy ask at any</p> <p>11 time whether Highland had ever made any</p> <p>12 loans to HCMS that weren't reflected in the</p> <p>13 promissory notes that are the subject of</p> <p>14 the lawsuits?</p> <p>15 A. I don't believe we ever asked.</p> <p>16 Q. Do you know who authorized</p> <p>17 Highland to make the loans to HCMS that</p> <p>18 you're aware of?</p> <p>19 A. Okay. I'm sorry, once again,</p> <p>20 John, the question?</p> <p>21 Q. Did you or Dugaboy know prior to</p> <p>22 the petition date who authorized Highland</p> <p>23 to make the loans to HCMS that are the</p> <p>24 subject of the promissory notes that you</p> <p>25 referred to?</p>
<p>Page 112</p> <p>1 N. Dondero</p> <p>2 A. Who authorized?</p> <p>3 Q. Yes.</p> <p>4 A. I don't know.</p> <p>5 Q. Do you recall if you or Dugaboy</p> <p>6 asked anybody at any time prior to the</p> <p>7 petition date who authorized Highland to</p> <p>8 make the loans to HCMS?</p> <p>9 A. I don't believe that was asked.</p> <p>10 Q. Okay. Do you have any</p> <p>11 information as to whether HCMS intended to</p> <p>12 pay back each of the loans that are the</p> <p>13 subject of the promissory notes at the time</p> <p>14 the loans were given to them by Highland?</p> <p>15 MS. DEITSCH-PEREZ: Objection.</p> <p>16 No foundation.</p> <p>17 A. John, can you just say the</p> <p>18 question again, please?</p> <p>19 Q. Sure.</p> <p>20 Did you or Dugaboy have any</p> <p>21 information prior to the petition date as</p> <p>22 to whether HCMS intended to repay the loans</p> <p>23 that are the subject of the promissory</p> <p>24 notes that you identified?</p> <p>25 A. No.</p>	<p>Page 113</p> <p>1 N. Dondero</p> <p>2 Q. Okay. Did you or Dugaboy ever</p> <p>3 ask anybody prior to the petition date</p> <p>4 whether HCMS had intended to repay the</p> <p>5 loans at the time and times that it</p> <p>6 obtained them from Highland?</p> <p>7 A. Okay, John, can you ask that</p> <p>8 again?</p> <p>9 Q. Sure.</p> <p>10 Did you or Dugaboy ever ask</p> <p>11 anybody whether HCMS intended to repay the</p> <p>12 loans at the time HCMS obtained them from</p> <p>13 Highland?</p> <p>14 A. I don't believe we asked their</p> <p>15 intent.</p> <p>16 Q. Okay.</p> <p>17 MS. DEITSCH-PEREZ: Whenever –</p> <p>18 we've been going about another hour.</p> <p>19 So whenever is good for you, John.</p> <p>20 MR. MORRIS: Okay. I'm going to</p> <p>21 finish up this section here.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. Do you or Dugaboy have any</p> <p>24 knowledge as to why Highland made the loans</p> <p>25 to HCMS?</p>

<p>Page 114</p> <p>1 N. Dondero</p> <p>2 A. Only assumptions.</p> <p>3 Q. Okay. I don't want assumptions.</p> <p>4 I want information.</p> <p>5 A. Then I don't -- then I don't</p> <p>6 know.</p> <p>7 Q. Okay. Do you or Dugaboy ever ask</p> <p>8 anybody why Highland made the loans to HCMS</p> <p>9 that are the subject of the promissory</p> <p>10 notes you referred to?</p> <p>11 A. No.</p> <p>12 Q. Did you or Dugaboy ever make any</p> <p>13 effort to try to determine why Highland</p> <p>14 made the loans to HCMS?</p> <p>15 A. No, not that I remember.</p> <p>16 Q. Did you or Dugaboy know prior to</p> <p>17 the petition date what HCMS did with the</p> <p>18 proceeds of the loans that it obtained from</p> <p>19 Highland?</p> <p>20 A. I don't know, John.</p> <p>21 Q. Did you or Dugaboy ever ask</p> <p>22 anybody at any time prior to the petition</p> <p>23 date what HCMS did with the proceeds of the</p> <p>24 loans that it obtained from Highland?</p> <p>25 A. No.</p>	<p>Page 115</p> <p>1 N. Dondero</p> <p>2 Q. Did you or Dugaboy ever make any</p> <p>3 effort to determine what HCMS did with the</p> <p>4 proceeds of the loans that it obtained from</p> <p>5 Highland?</p> <p>6 A. No.</p> <p>7 Q. You're aware that HCMS issued</p> <p>8 promissory notes in favor of Highland in</p> <p>9 exchange for the loans, correct?</p> <p>10 A. Correct.</p> <p>11 Q. Prior to the petition date, did</p> <p>12 you ever see any promissory note that was</p> <p>13 issued by HCMS in favor of Highland?</p> <p>14 A. Prior to October of '19?</p> <p>15 Q. Correct.</p> <p>16 A. I don't recall.</p> <p>17 Q. Do you recall whether you or</p> <p>18 Dugaboy asked at any time prior to the</p> <p>19 petition date to see promissory notes that</p> <p>20 were executed on behalf of HCMS in favor of</p> <p>21 Highland?</p> <p>22 A. I don't know.</p> <p>23 Q. Do you recall whether you or</p> <p>24 Dugaboy made any effort at any time prior</p> <p>25 to the petition date to obtain copies of</p>
<p>Page 116</p> <p>1 N. Dondero</p> <p>2 promissory notes that were issued by HCMS</p> <p>3 in favor of Highland?</p> <p>4 A. I don't believe so.</p> <p>5 Q. Prior to the petition date, were</p> <p>6 you and Dugaboy aware of the terms of the</p> <p>7 promissory notes that HCMS issued in favor</p> <p>8 of Highland?</p> <p>9 MS. DEITSCH-PEREZ: Object to the</p> <p>10 form.</p> <p>11 A. Can you be more specific? Just</p> <p>12 the terms of the loan, John?</p> <p>13 Q. Yes.</p> <p>14 Did you and Dugaboy know the</p> <p>15 terms of the loans that were reflected in</p> <p>16 the promissory notes?</p> <p>17 A. I believe so, yes.</p> <p>18 Q. Okay. And who gave you the</p> <p>19 information regarding the terms of the</p> <p>20 loans that HCMS obtained from Highland?</p> <p>21 A. Jim.</p> <p>22 Q. Do you remember anything about</p> <p>23 the terms of the loans that HCMS obtained</p> <p>24 from Highland?</p> <p>25 A. Regarding -- you mean the term?</p>	<p>Page 117</p> <p>1 N. Dondero</p> <p>2 There's 30-year. There's demand.</p> <p>3 Q. You tell me.</p> <p>4 You described five promissory</p> <p>5 notes, I think, that were executed by HCMS</p> <p>6 in favor of Highland, right?</p> <p>7 A. That's correct.</p> <p>8 Q. Okay. And I believe you</p> <p>9 testified that you didn't see those notes</p> <p>10 prior to the petition date, correct?</p> <p>11 A. Right. Well, yeah, I'm a little</p> <p>12 vague on the date; but, yes, I don't</p> <p>13 believe I saw them prior to -- so right,</p> <p>14 prior to the petition date, correct.</p> <p>15 Um-hmm.</p> <p>16 Q. But did you or Dugaboy --</p> <p>17 withdrawn.</p> <p>18 Did you and Dugaboy have an</p> <p>19 understanding of the terms of the notes</p> <p>20 prior to the petition date?</p> <p>21 A. Yes. From what I understand, my</p> <p>22 recollection is several of them were</p> <p>23 demand, and one was 30-year.</p> <p>24 Q. And do you have an understanding</p> <p>25 of what it means -- of what a demand notice</p>

<p>Page 118</p> <p>1 N. Dondero</p> <p>2 is?</p> <p>3 MS. DEITSCH-PEREZ: Object to the</p> <p>4 form.</p> <p>5 A. Payable upon demand.</p> <p>6 Q. Okay. So you knew prior to the</p> <p>7 petition date that certain of the notes</p> <p>8 issued by HCMS to Highland were demand</p> <p>9 notes; is that right?</p> <p>10 A. Yes.</p> <p>11 Q. Okay.</p> <p>12 MR. MORRIS: All right. I'm</p> <p>13 happy to take a break now. Hopefully</p> <p>14 it won't be as long as the last one.</p> <p>15 But we can go off the record.</p> <p>16 THE VIDEOGRAPHER: The time is</p> <p>17 12:00 p.m. We are going off the</p> <p>18 record.</p> <p>19 (Recess is taken.)</p> <p>20 (Patrick Daugherty not in</p> <p>21 attendance at this time.)</p> <p>22 THE VIDEOGRAPHER: The time is</p> <p>23 12:16. Back on the record.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Ms. Dondero, did you communicate</p>	<p>Page 119</p> <p>1 N. Dondero</p> <p>2 with anybody during your break regarding</p> <p>3 any aspect of your testimony?</p> <p>4 A. No, sir.</p> <p>5 Q. Okay. Have you ever heard of an</p> <p>6 entity called HCRE Partners LLC?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Do you understand that HCRE is an</p> <p>9 affiliate of Highland?</p> <p>10 A. I do.</p> <p>11 Q. Okay. And what was the – what</p> <p>12 is the basis of your understanding that</p> <p>13 HCRE – withdrawn. I should have put a</p> <p>14 time frame on this.</p> <p>15 Is it your understanding that</p> <p>16 HCRE was an affiliate of Highland prior to</p> <p>17 the petition date?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And what is the basis for your</p> <p>20 understanding?</p> <p>21 A. They were under the Highland</p> <p>22 umbrella prior to October of '19.</p> <p>23 Q. And to the best of your</p> <p>24 knowledge, does HCRE fit the definition of</p> <p>25 affiliate that you provided earlier today?</p>
<p>Page 120</p> <p>1 N. Dondero</p> <p>2 MS. DEITSCH-PEREZ: Objection.</p> <p>3 A. Yes.</p> <p>4 Q. Do you know the nature of HCRE's</p> <p>5 business?</p> <p>6 A. I believe it's real estate.</p> <p>7 Q. Do you or Dugaboy have any</p> <p>8 information about the nature of HCRE's</p> <p>9 business other than it's real estate?</p> <p>10 A. No.</p> <p>11 Q. Did you or Dugaboy ever ask</p> <p>12 anybody what the nature of HCRE's business</p> <p>13 was?</p> <p>14 A. No.</p> <p>15 Q. Did you or Dugaboy ever make any</p> <p>16 effort to ascertain the nature of HCRE's</p> <p>17 business?</p> <p>18 A. Not that I recall.</p> <p>19 Q. Did you or Dugaboy know whether</p> <p>20 HCRE had any agreements with Highland prior</p> <p>21 to the petition date?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form.</p> <p>24 MR. MORRIS: Withdrawn.</p> <p>25 BY MR. MORRIS:</p>	<p>Page 121</p> <p>1 N. Dondero</p> <p>2 Q. Do you or Dugaboy know whether</p> <p>3 HCRE had any agreements with Highland prior</p> <p>4 to the petition date other than the</p> <p>5 promissory notes?</p> <p>6 A. Other than the promissory notes,</p> <p>7 no.</p> <p>8 Q. Did you or Dugaboy ever ask</p> <p>9 anybody at any time prior to the petition</p> <p>10 date whether HCRE had any agreements with</p> <p>11 Highland other than the promissory notes?</p> <p>12 A. No.</p> <p>13 Q. Did you or Dugaboy make any</p> <p>14 effort prior to the petition date to</p> <p>15 ascertain whether any agreements existed</p> <p>16 between Highland and HCRE other than the</p> <p>17 promissory notes?</p> <p>18 A. Not that I recall.</p> <p>19 Q. Do you know – withdrawn.</p> <p>20 Did you or Dugaboy know prior to</p> <p>21 the petition date whether HCRE had ever</p> <p>22 rendered any services to Highland?</p> <p>23 MS. DEITSCH-PEREZ: Object to the</p> <p>24 form.</p> <p>25 A. I don't know.</p>

<p>Page 122</p> <p>1 N. Dondero</p> <p>2 Q. Did you or Dugaboy ever ask</p> <p>3 anybody prior to the petition date whether</p> <p>4 HCRE ever rendered any services to</p> <p>5 Highland?</p> <p>6 A. I don't believe so.</p> <p>7 Q. Did you or Dugaboy make any</p> <p>8 effort to ascertain prior to the petition</p> <p>9 date whether HCRE ever rendered any</p> <p>10 services to Highland?</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 A. I'm sorry, John, can you repeat</p> <p>14 that, please, the question?</p> <p>15 Q. Did you or Dugaboy make any</p> <p>16 effort prior to the petition date to</p> <p>17 determine whether or not HCRE had ever</p> <p>18 provided any services to Highland?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 A. I don't believe so.</p> <p>22 Q. Are you aware -- withdrawn.</p> <p>23 Did you or Dugaboy know prior to</p> <p>24 the petition date whether Highland had ever</p> <p>25 loaned any money to HCRE?</p>	<p>Page 123</p> <p>1 N. Dondero</p> <p>2 A. Yes.</p> <p>3 Q. And were the loans that you're</p> <p>4 aware of reflected in promissory notes?</p> <p>5 A. Correct.</p> <p>6 Q. And are those the promissory</p> <p>7 notes that are the subject of one of the</p> <p>8 litigations?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Are you aware of any loans that</p> <p>11 Highland ever made to HCRE that are not the</p> <p>12 subject of one of the promissory notes in</p> <p>13 the lawsuits?</p> <p>14 A. I'm not aware of any.</p> <p>15 Q. Did you ever ask anybody whether</p> <p>16 Highland had ever made any loans to HCRE</p> <p>17 that were not reflected in the promissory</p> <p>18 notes that are the subject of the lawsuit?</p> <p>19 A. Not that I recall.</p> <p>20 Q. Did you or Dugaboy know prior to</p> <p>21 the petition date who authorized Highland</p> <p>22 to make the loans to HCRE?</p> <p>23 MS. DEITSCH-PEREZ: Object to the</p> <p>24 form.</p> <p>25 A. Sorry, John, could you say the</p>
<p>Page 124</p> <p>1 N. Dondero</p> <p>2 question again, please?</p> <p>3 Q. Sure.</p> <p>4 Did you or Dugaboy know prior to</p> <p>5 the petition date who authorized Highland</p> <p>6 to make the loans to HCRE?</p> <p>7 MS. DEITSCH-PEREZ: Object to the</p> <p>8 form.</p> <p>9 A. I don't know.</p> <p>10 Q. Did you or Dugaboy ever ask</p> <p>11 anybody prior to the petition date who</p> <p>12 authorized Highland to make the loans to</p> <p>13 HCRE that are reflected in the promissory</p> <p>14 notes you referred to?</p> <p>15 MS. DEITSCH-PEREZ: Object to the</p> <p>16 form.</p> <p>17 A. No.</p> <p>18 Q. Did you or Dugaboy ever make any</p> <p>19 effort to ascertain who had authorized</p> <p>20 Highland to make the loans to HCRE that are</p> <p>21 reflected in the promissory notes you</p> <p>22 referred to?</p> <p>23 A. Not that I recall.</p> <p>24 Q. Did you or Dugaboy have any</p> <p>25 information prior to the petition date as</p>	<p>Page 125</p> <p>1 N. Dondero</p> <p>2 to whether HCRE intended to repay the loans</p> <p>3 that are reflected in the promissory notes</p> <p>4 at the time the loans were made?</p> <p>5 MS. DEITSCH-PEREZ: Object to the</p> <p>6 form.</p> <p>7 A. John, I'm sorry, did I have any</p> <p>8 information if they intended to pay their</p> <p>9 loans?</p> <p>10 Q. At the time that they obtained</p> <p>11 the loans, yes.</p> <p>12 A. I have no reason to think they</p> <p>13 wouldn't pay their loans --</p> <p>14 Q. Okay.</p> <p>15 A. -- at the time they were made,</p> <p>16 correct.</p> <p>17 Q. You're not aware of any facts</p> <p>18 that suggest that HCRE didn't intend to</p> <p>19 repay the loans at the time they obtained</p> <p>20 them, right?</p> <p>21 A. Correct.</p> <p>22 Q. Prior to the petition date, did</p> <p>23 you or Dugaboy have any information in</p> <p>24 regard to the purpose of the loans that</p> <p>25 Highland gave to HCRE that were reflected</p>

<p>Page 126</p> <p>1 N. Dondero</p> <p>2 in the promissory notes?</p> <p>3 A. No, no idea.</p> <p>4 Q. Did you or Dugaboy attempt to</p> <p>5 obtain prior to the petition date any</p> <p>6 information concerning the purpose of the</p> <p>7 loans that were made by Highland to HCRE</p> <p>8 that were reflected in the promissory</p> <p>9 notes?</p> <p>10 A. I don't believe so.</p> <p>11 Q. Did you or Dugaboy make any</p> <p>12 effort to ascertain the purpose of the</p> <p>13 loans that Highland made to HCRE?</p> <p>14 A. I don't believe so.</p> <p>15 Q. Did you or Dugaboy know prior to</p> <p>16 the petition date what HCRE did with the</p> <p>17 proceeds of the loans that it obtained from</p> <p>18 Highland in exchange for the promissory</p> <p>19 notes?</p> <p>20 A. We don't know.</p> <p>21 Q. Did you or Dugaboy ever ask</p> <p>22 anybody what HCRE did with the proceeds of</p> <p>23 the loans that it obtained from Highland in</p> <p>24 exchanged from the promissory notes?</p> <p>25 A. I don't believe we did.</p>	<p>Page 127</p> <p>1 N. Dondero</p> <p>2 Q. Did you or Dugaboy ever make any</p> <p>3 effort prior to the petition date to</p> <p>4 ascertain what HCRE did with the proceeds</p> <p>5 of the loans that it obtained from Highland</p> <p>6 that are reflected in the promissory notes?</p> <p>7 A. No.</p> <p>8 Q. Did you ever see – withdrawn.</p> <p>9 Did you or Dugaboy ever see prior</p> <p>10 to the petition – withdrawn. Not good.</p> <p>11 Too many questions.</p> <p>12 Did you or Dugaboy – withdrawn.</p> <p>13 Prior to the petition date, did</p> <p>14 you or Dugaboy ever see any promissory note</p> <p>15 that was executed by HCRE in favor of</p> <p>16 Highland?</p> <p>17 A. Not that I recall.</p> <p>18 Q. Prior to the petition date, did</p> <p>19 you or Dugaboy ever ask anybody to see any</p> <p>20 promissory note that was issued by HCRE in</p> <p>21 favor of Highland?</p> <p>22 A. Not that I recall.</p> <p>23 Q. Prior to the petition date, did</p> <p>24 you or Dugaboy make any effort to try to</p> <p>25 obtain any promissory note that was ever</p>
<p>Page 128</p> <p>1 N. Dondero</p> <p>2 executed on behalf of HCRE in favor of</p> <p>3 Highland?</p> <p>4 A. No.</p> <p>5 Q. Prior to the petition date, did</p> <p>6 you and Dugaboy know the terms of any of</p> <p>7 the promissory notes that were issued by</p> <p>8 HCRE to Highland?</p> <p>9 A. Yes.</p> <p>10 Q. And how did you learn of the</p> <p>11 terms of the notes?</p> <p>12 A. From Jim.</p> <p>13 Q. And what did Jim tell you about</p> <p>14 the terms of the notes that were issued by</p> <p>15 HCRE to Highland?</p> <p>16 A. He mentioned the 30-year demand,</p> <p>17 the dates, the amounts.</p> <p>18 Q. Okay. Did you do – withdrawn.</p> <p>19 Did you or Dugaboy take any steps</p> <p>20 to try to corroborate what your brother</p> <p>21 told you concerning the terms of the notes</p> <p>22 that were issued by HCRE to Highland?</p> <p>23 A. Not that I recall.</p> <p>24 Q. Okay. Did you have any source of</p> <p>25 information for the terms of the notes</p>	<p>Page 129</p> <p>1 N. Dondero</p> <p>2 other than what your brother gave to you?</p> <p>3 A. I don't believe so.</p> <p>4 Q. Okay. Last one. NexPoint.</p> <p>5 Are you familiar with an entity</p> <p>6 called NexPoint Advisors LP?</p> <p>7 A. Yes.</p> <p>8 Q. Can we refer to that entity as</p> <p>9 NexPoint?</p> <p>10 A. Yes.</p> <p>11 Q. Is it your understanding that</p> <p>12 NexPoint was an affiliate of Highland's</p> <p>13 prior to the petition date, as you've used</p> <p>14 the term "affiliate"?</p> <p>15 A. Um-hmm. Yes.</p> <p>16 Q. And what's the basis for your</p> <p>17 understanding that prior to the petition</p> <p>18 date, NexPoint was an affiliate of</p> <p>19 Highland?</p> <p>20 A. Because Jim is a beneficial</p> <p>21 owner.</p> <p>22 Q. Is it your understanding that Jim</p> <p>23 is a beneficial owner of all of the</p> <p>24 defendants in each of the promissory note</p> <p>25 lawsuits?</p>



<p>Page 130</p> <p>1 N. Dondero</p> <p>2 MS. DEITSCH-PEREZ: Object to the</p> <p>3 form.</p> <p>4 THE WITNESS: Can I answer?</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. Yes.</p> <p>7 A. Yes, that is my belief, John.</p> <p>8 Q. Do you have any reason to believe</p> <p>9 Jim is not a beneficial owner of any</p> <p>10 corporate defendant in any of the lawsuits?</p> <p>11 A. No, I have no reason to believe</p> <p>12 that.</p> <p>13 Q. Prior to the petition date, did</p> <p>14 you or Dugaboy know the nature of</p> <p>15 NexPoint's business?</p> <p>16 A. I'm not really sure.</p> <p>17 Q. Do you know the nature of</p> <p>18 NexPoint's business today?</p> <p>19 A. I'm not sure.</p> <p>20 Q. Did you or Dugaboy ever ask</p> <p>21 anybody at any time what the nature of</p> <p>22 NexPoint's business was?</p> <p>23 A. I don't believe we did.</p> <p>24 Q. Did you or Dugaboy make any</p> <p>25 effort at any time to try to learn what the</p>	<p>Page 131</p> <p>1 N. Dondero</p> <p>2 nature of NexPoint's business was?</p> <p>3 A. Not that I recall.</p> <p>4 Q. Did you or Dugaboy know prior to</p> <p>5 the petition date whether NexPoint had any</p> <p>6 agreements with Highland?</p> <p>7 MS. DEITSCH-PEREZ: Object to the</p> <p>8 form.</p> <p>9 MR. MORRIS: I apologize. I'll</p> <p>10 make the same qualification.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Did you and Dugaboy know prior to</p> <p>13 the petition date whether NexPoint and</p> <p>14 Highland had any agreements together other</p> <p>15 than the promissory notes?</p> <p>16 A. I'm not aware of any.</p> <p>17 Q. Okay. Did you or Dugaboy ask</p> <p>18 anybody at any time prior to the petition</p> <p>19 date whether any agreements existed between</p> <p>20 NexPoint and Highland other than the</p> <p>21 promissory notes?</p> <p>22 A. No, not that I'm aware of.</p> <p>23 Q. Did you or Dugaboy ever make any</p> <p>24 effort prior to the petition date to</p> <p>25 determine whether any agreements existed</p>
<p>Page 132</p> <p>1 N. Dondero</p> <p>2 between Highland and NexPoint other than</p> <p>3 the promissory notes?</p> <p>4 A. Not that I'm aware of.</p> <p>5 Q. Did you or Dugaboy know prior to</p> <p>6 the petition date whether NexPoint ever</p> <p>7 rendered any services to Highland?</p> <p>8 MS. DEITSCH-PEREZ: Object to the</p> <p>9 form.</p> <p>10 A. I don't know.</p> <p>11 Q. Did you or Dugaboy ever ask</p> <p>12 anybody at any time prior to the petition</p> <p>13 date whether NexPoint had ever rendered any</p> <p>14 services to Highland?</p> <p>15 MS. DEITSCH-PEREZ: Object to the</p> <p>16 form.</p> <p>17 A. I'm sorry, John. Can you repeat</p> <p>18 the question, please?</p> <p>19 Q. Sure.</p> <p>20 Did you and Dugaboy ask anybody</p> <p>21 at any time prior to the petition date</p> <p>22 whether NexPoint had ever rendered any</p> <p>23 services to Highland?</p> <p>24 A. Not that I'm aware of.</p> <p>25 Q. Did you and Dugaboy make any</p>	<p>Page 133</p> <p>1 N. Dondero</p> <p>2 effort prior to the petition date to</p> <p>3 determine whether or not NexPoint had ever</p> <p>4 rendered any services to Highland?</p> <p>5 A. Not that I'm aware of.</p> <p>6 Q. Are you aware that Highland made</p> <p>7 loans to NexPoint from time to time?</p> <p>8 A. I don't know.</p> <p>9 Q. Did you ever see any -- do you</p> <p>10 know whether -- withdrawn.</p> <p>11 Prior to the petition date, were</p> <p>12 you and Dugaboy aware of any promissory</p> <p>13 notes that NexPoint had issued in favor of</p> <p>14 Highland?</p> <p>15 MS. DEITSCH-PEREZ: You mean</p> <p>16 other than what's at issue here? Just</p> <p>17 generally?</p> <p>18 MR. MORRIS: I'm starting with</p> <p>19 the general, yeah.</p> <p>20 A. I'm not aware of.</p> <p>21 Q. Are you aware of any promissory</p> <p>22 notes that NexPoint ever issued in favor of</p> <p>23 Highland?</p> <p>24 A. I'm not aware of any.</p> <p>25 Q. Do you know whether there are any</p>

<p>Page 134</p> <p>1 N. Dondero</p> <p>2 promissory notes that NexPoint issued that</p> <p>3 are the subject of this lawsuit?</p> <p>4 A. Yeah. John, can we back up a</p> <p>5 question?</p> <p>6 Q. Absolutely.</p> <p>7 A. Are you talking about the notes</p> <p>8 – yeah, please.</p> <p>9 Are you talking about the notes,</p> <p>10 part of this proceeding or are you not?</p> <p>11 Q. I'm starting – that's okay. Let</p> <p>12 me –</p> <p>13 A. Because obviously there is the</p> <p>14 NexPoint promissory note that we are</p> <p>15 talking about. When I answered the way I</p> <p>16 did, it was regarding others that I'm not</p> <p>17 aware of. I'm aware of the one obviously</p> <p>18 in this proceeding.</p> <p>19 Q. Okay. Thank you for the –</p> <p>20 A. Does that clarify?</p> <p>21 Q. It does. It is helpful. Thank</p> <p>22 you very much.</p> <p>23 Other than the one – how many</p> <p>24 NexPoint notes do you understand are the</p> <p>25 subject of these litigations?</p>	<p>Page 135</p> <p>1 N. Dondero</p> <p>2 A. One.</p> <p>3 Q. Okay. Other than that one note,</p> <p>4 are you aware of any other promissory notes</p> <p>5 that NexPoint ever issued in favor of</p> <p>6 Highland?</p> <p>7 MS. DEITSCH-PEREZ: Object to the</p> <p>8 form.</p> <p>9 A. No, I'm not aware of any other.</p> <p>10 Q. Did you ask anybody – withdrawn.</p> <p>11 Did you or Dugaboy ask anybody</p> <p>12 prior to the petition date whether NexPoint</p> <p>13 had issued any other promissory notes in</p> <p>14 favor of Highland other than the one that's</p> <p>15 the subject of the lawsuit?</p> <p>16 A. I don't believe so.</p> <p>17 Q. Did you or Dugaboy know prior to</p> <p>18 the petition date whether Highland had made</p> <p>19 any loan to NexPoint other than the loan</p> <p>20 that's reflected in the promissory note?</p> <p>21 MS. DEITSCH-PEREZ: Object to the</p> <p>22 form.</p> <p>23 A. I'm not aware of any.</p> <p>24 Q. Do you know how much the</p> <p>25 promissory – do you know the principal</p>
<p>Page 136</p> <p>1 N. Dondero</p> <p>2 amount of – withdrawn.</p> <p>3 Do you know the – withdrawn.</p> <p>4 Did you and Dugaboy know the</p> <p>5 principal amount of NexPoint's promissory</p> <p>6 note prior to the petition date?</p> <p>7 A. Yes.</p> <p>8 Q. And how did you learn that?</p> <p>9 A. From Jim.</p> <p>10 Q. And what did Jim tell you that</p> <p>11 you can recall?</p> <p>12 A. 30 million thereabouts, in that</p> <p>13 neighborhood.</p> <p>14 Q. Do you know how many principal</p> <p>15 was owed as of the petition date?</p> <p>16 A. It's paid down by, oh, about a</p> <p>17 third, so it's somewhere 22, 23 million, I</p> <p>18 believe, in that ballpark.</p> <p>19 Q. Okay. And how did you learn that</p> <p>20 NexPoint had paid down the principal to</p> <p>21 that ballpark?</p> <p>22 A. I'm not sure.</p> <p>23 Q. Do you recall when you learned</p> <p>24 that NexPoint had paid down the principal</p> <p>25 to that ballpark?</p>	<p>Page 137</p> <p>1 N. Dondero</p> <p>2 A. Not exactly.</p> <p>3 Q. Okay. But you are aware that</p> <p>4 NexPoint paid approximately 7 to 8 million</p> <p>5 dollars in principal on the note that's the</p> <p>6 subject of the lawsuit, correct?</p> <p>7 MS. DEITSCH-PEREZ: Object to the</p> <p>8 form.</p> <p>9 A. Yes, it was somewhere in that</p> <p>10 ballpark. Sure.</p> <p>11 Q. Okay. Did you and Dugaboy know</p> <p>12 prior to the petition date who authorized</p> <p>13 Highland to make the loan to NexPoint?</p> <p>14 MS. DEITSCH-PEREZ: Object to the</p> <p>15 form.</p> <p>16 A. No, I don't know.</p> <p>17 Q. Did you or Dugaboy prior to the</p> <p>18 petition date ask anybody who had</p> <p>19 authorized Highland to make the \$30 million</p> <p>20 loan to NexPoint?</p> <p>21 A. Not that I recall.</p> <p>22 Q. Did you or Dugaboy make any</p> <p>23 effort prior to the petition date to</p> <p>24 determine who had authorized Highland to</p> <p>25 make the \$30 million loan to NexPoint?</p>

<p>Page 138</p> <p>1 N. Dondero</p> <p>2 A. Not that I recall.</p> <p>3 Q. Do you have any reason to believe</p> <p>4 that NexPoint did not intend to pay all</p> <p>5 principal and interest due under the</p> <p>6 promissory note at the time that it</p> <p>7 obtained the loan from Highland?</p> <p>8 A. I have no reason to believe they</p> <p>9 weren't intending to pay.</p> <p>10 Q. Did you have any reason to</p> <p>11 believe – withdrawn.</p> <p>12 Do you or Dugaboy have any reason</p> <p>13 to believe that Highland wasn't not</p> <p>14 expecting to get repaid all principal and</p> <p>15 interest due under the loan at the time it</p> <p>16 made the loan?</p> <p>17 MS. DEITSCH-PEREZ: Object to the</p> <p>18 form. Actually, can somebody –</p> <p>19 Annette, could you read that</p> <p>20 back? There were a double negative or</p> <p>21 two.</p> <p>22 MR. MORRIS: Okay. Let me</p> <p>23 rephrase the question. That's fine.</p> <p>24 That's fine.</p> <p>25 BY MR. MORRIS:</p>	<p>Page 139</p> <p>1 N. Dondero</p> <p>2 Q. Do you have any reason to believe</p> <p>3 that Highland didn't intend to get repaid</p> <p>4 all principal and interest due under the</p> <p>5 NexPoint note at the time it made the loan?</p> <p>6 A. I have no reason to believe that</p> <p>7 I didn't think that they weren't to get</p> <p>8 repaid at the time the notes were</p> <p>9 initiated.</p> <p>10 Q. Okay. Did you or Dugaboy know</p> <p>11 prior to the petition date what the purpose</p> <p>12 of the \$30 million loan was?</p> <p>13 A. I don't know.</p> <p>14 Q. Did you or Dugaboy ever ask</p> <p>15 anybody prior to the petition date what the</p> <p>16 purpose of the \$30 million loan was?</p> <p>17 A. I don't believe so.</p> <p>18 Q. Did you or Dugaboy make any</p> <p>19 effort prior to the petition date to</p> <p>20 ascertain what the purpose of the \$30</p> <p>21 million loan was?</p> <p>22 A. I don't believe so.</p> <p>23 Q. Do you or Dugaboy – withdrawn.</p> <p>24 Did you or Dugaboy know prior to</p> <p>25 the petition date what NexPoint did with</p>
<p>Page 140</p> <p>1 N. Dondero</p> <p>2 the proceeds of the loan?</p> <p>3 A. No, I don't know.</p> <p>4 Q. Did you or Dugaboy ever ask</p> <p>5 anybody prior to the petition date what</p> <p>6 NexPoint did with the proceeds of the loan?</p> <p>7 A. We did not.</p> <p>8 Q. Did you or Dugaboy know prior to</p> <p>9 the petition date that the \$30 million loan</p> <p>10 was a rollup of previously existing loans</p> <p>11 that Highland had made to NexPoint?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form.</p> <p>14 A. I was not aware of that.</p> <p>15 Q. Are you aware today that the \$30</p> <p>16 million loan was a roll up of previously</p> <p>17 existing notes?</p> <p>18 A. I didn't, no.</p> <p>19 Q. Did you ever see the promissory</p> <p>20 note that was issued by NexPoint in favor</p> <p>21 of Highland that's the subject of one of</p> <p>22 these notes – litigations?</p> <p>23 A. I don't remember. That was in</p> <p>24 '17, correct, John?</p> <p>25 Q. I'm just asking if – let me ask</p>	<p>Page 141</p> <p>1 N. Dondero</p> <p>2 a different question.</p> <p>3 A. Yeah, I don't –</p> <p>4 Q. Okay. Did you or Dugaboy see the</p> <p>5 promissory note prior to the</p> <p>6 commencement – no.</p> <p>7 Did you or Dugaboy prior to the</p> <p>8 petition date ever see the promissory note</p> <p>9 that NexPoint issued in favor of Highland</p> <p>10 in the principal amount of approximately</p> <p>11 \$30 million?</p> <p>12 A. I don't recall.</p> <p>13 Q. Do you recall if you or Dugaboy</p> <p>14 ever asked anybody prior to the petition</p> <p>15 date to see the \$30 million promissory note</p> <p>16 that NexPoint issued in favor of Highland?</p> <p>17 A. I don't believe so.</p> <p>18 Q. Did you or Dugaboy make any</p> <p>19 effort prior to the petition date to obtain</p> <p>20 a copy of the \$30 million promissory note</p> <p>21 that NexPoint issued in favor of Highland?</p> <p>22 A. I don't recall.</p> <p>23 Q. Were you and Dugaboy aware at any</p> <p>24 time prior to the petition date of the</p> <p>25 terms of the promissory note that NexPoint</p>

<p>Page 142</p> <p>1 N. Dondero</p> <p>2 issued in favor of Highland?</p> <p>3 A. 30-year.</p> <p>4 Q. It was a 30-year note?</p> <p>5 A. Um-hmm.</p> <p>6 Q. Do you recall anything else about</p> <p>7 that note?</p> <p>8 A. I believe it was 2017.</p> <p>9 Q. Okay.</p> <p>10 A. And the amounts we already</p> <p>11 discussed.</p> <p>12 Q. Do you know who determined that</p> <p>13 the promissory note would be a 30-year</p> <p>14 term?</p> <p>15 A. I do not.</p> <p>16 Q. Do you know who on behalf of</p> <p>17 Highland agreed to accept a 30-year note</p> <p>18 from NexPoint?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 A. I don't know, John.</p> <p>22 Q. Did you or Dugaboy make an effort</p> <p>23 at any time prior to the petition date to</p> <p>24 determine whether or not a 30-year term was</p> <p>25 appropriate?</p>	<p>Page 143</p> <p>1 N. Dondero</p> <p>2 MS. DEITSCH-PEREZ: Object to the</p> <p>3 form.</p> <p>4 A. No.</p> <p>5 Q. Did you or Dugaboy ask anybody at</p> <p>6 any time prior to the petition date whether</p> <p>7 a 30-year term was appropriate?</p> <p>8 MS. DEITSCH-PEREZ: Object to the</p> <p>9 form.</p> <p>10 A. Not that I recall.</p> <p>11 Q. Did you or Dugaboy know prior to</p> <p>12 the petition date whether the \$30 million</p> <p>13 note was the subject of any negotiation</p> <p>14 between NexPoint and Highland?</p> <p>15 MS. DEITSCH-PEREZ: Object to the</p> <p>16 form.</p> <p>17 A. I didn't know.</p> <p>18 Q. Did you or Dugaboy ask anybody at</p> <p>19 any time prior to the petition date whether</p> <p>20 the \$30 million note was subject to</p> <p>21 negotiation?</p> <p>22 A. Subject to negotiation? Can you</p> <p>23 elaborate? What negotiation?</p> <p>24 Q. Are you aware of anybody on</p> <p>25 behalf of Highland suggesting that the term</p>
<p>Page 144</p> <p>1 N. Dondero</p> <p>2 of the note should be something other than</p> <p>3 30 years?</p> <p>4 A. No. Changing that term, no, I'm</p> <p>5 not familiar.</p> <p>6 Q. Okay. Let's switch topics and</p> <p>7 I'll cover this topic and then we can take</p> <p>8 a lunch break.</p> <p>9 I'd like to turn now to the</p> <p>10 limited partnership agreement, the LP</p> <p>11 agreement as I think we've defined it. And</p> <p>12 I'm going to ask my colleague to put up on</p> <p>13 the screen – I don't think it's in the</p> <p>14 binder that I gave you.</p> <p>15 MS. DEITSCH-PEREZ: Yes, it is.</p> <p>16 MR. MORRIS: Oh, is it?</p> <p>17 MS. DEITSCH-PEREZ: It is?</p> <p>18 MR. MORRIS: What number is it?</p> <p>19 MS. DEITSCH-PEREZ: It is number</p> <p>20 2, it looks like.</p> <p>21 MR. MORRIS: So we'll put it up</p> <p>22 on the screen and then you can look at</p> <p>23 the hard copy.</p> <p>24 MS. DEITSCH-PEREZ: Okay. Is</p> <p>25 there a particular page you want to</p>	<p>Page 145</p> <p>1 N. Dondero</p> <p>2 turn to?</p> <p>3 MR. MORRIS: Let's just start</p> <p>4 with this.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. Do you understand –</p> <p>7 MS. DEITSCH-PEREZ: Hang on a</p> <p>8 minute. One second.</p> <p>9 Okay. We're good. We've got it.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. Okay. Are you looking at the</p> <p>12 document that is Exhibit 4 that's attached</p> <p>13 to the document that's been denoted as</p> <p>14 number 2?</p> <p>15 MS. DEITSCH-PEREZ: Yes.</p> <p>16 Turn to the page before the one</p> <p>17 that says –</p> <p>18 THE WITNESS: Oh, okay.</p> <p>19 A. So page 4 of 37?</p> <p>20 Q. Yes.</p> <p>21 (Document review.)</p> <p>22 A. Okay.</p> <p>23 Q. All right.</p> <p>24 A. Okay. Go ahead.</p> <p>25 Q. At the top, do you see it says</p>

<p>Page 146</p> <p>1 N. Dondero</p> <p>2 Document 63-4 in the middle?</p> <p>3 A. Yes, I do.</p> <p>4 Q. And you're at page 2 of 37,</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. Do you understand that</p> <p>8 this is the document we defined earlier as</p> <p>9 the LP agreement?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Have you seen this document</p> <p>12 before now?</p> <p>13 A. Yes.</p> <p>14 Q. Do you recall when you saw this</p> <p>15 document for the first time?</p> <p>16 A. Shortly after it was made, when I</p> <p>17 was trustee.</p> <p>18 Q. Okay. Do you recall the</p> <p>19 circumstances under which you saw the LP</p> <p>20 agreement for the first time?</p> <p>21 A. No, I don't remember the</p> <p>22 circumstance.</p> <p>23 Q. Do you have a copy of the LP</p> <p>24 agreement in your personal possession?</p> <p>25 Like other than right now, did you have it</p>	<p>Page 147</p> <p>1 N. Dondero</p> <p>2 before today or before I sent it?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Do you recall when you</p> <p>5 first obtained a copy of the LP agreement?</p> <p>6 A. The very first time?</p> <p>7 Q. Yeah.</p> <p>8 A. I don't know specifically, John.</p> <p>9 Q. Can we go to the document -- the</p> <p>10 page that's marked 32 of 37?</p> <p>11 MS. DEITSCH-PEREZ: 2 of 37?</p> <p>12 THE WITNESS: 32 of 7 -- 32 of</p> <p>13 37.</p> <p>14 MS. DEITSCH-PEREZ: Thank you.</p> <p>15 (Document review.)</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. And is that your signature there?</p> <p>18 MR. MORRIS: If we can get page</p> <p>19 32 of 37 up on the screen.</p> <p>20 (Document review.)</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. And is that your signature there,</p> <p>23 ma'am?</p> <p>24 A. Well, on the paper copy, it is.</p> <p>25 Oh, there it is. Yes.</p>
<p>Page 148</p> <p>1 N. Dondero</p> <p>2 Q. Okay.</p> <p>3 MR. MORRIS: And I apologize La</p> <p>4 Asia, but can we go now to Section</p> <p>5 3.10?</p> <p>6 We're going to mark it. This one</p> <p>7 is Exhibit 2. Don't worry that we are</p> <p>8 going out of order. They're premarked.</p> <p>9 So this document we're going to mark as</p> <p>10 Exhibit 2.</p> <p>11 (N. Dondero Exhibit 2, Amended</p> <p>12 Complaint for (1) Breach of Contract,</p> <p>13 (II) Turnover of Property, (III)</p> <p>14 Fraudulent Transfer, and (IV) Breach of</p> <p>15 Fiduciary Duty, marked for</p> <p>16 identification, as of this date.)</p> <p>17 MS. DEITSCH-PEREZ: Did I miss</p> <p>18 Exhibit 1?</p> <p>19 MR. MORRIS: No.</p> <p>20 MS. DEITSCH-PEREZ: Okay.</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. Do you see Section 3.10? Do you</p> <p>23 have that in front of you?</p> <p>24 A. Yes.</p> <p>25 Q. Have you seen that provision of</p>	<p>Page 149</p> <p>1 N. Dondero</p> <p>2 the LP agreement before?</p> <p>3 A. Yes.</p> <p>4 Q. Do you recall when you first read</p> <p>5 or you first saw Section 3.10?</p> <p>6 A. On the day I probably signed it.</p> <p>7 Q. All right. I don't want you to</p> <p>8 speculate. I want you to search your</p> <p>9 memory.</p> <p>10 A. Okay.</p> <p>11 Q. Do you recall when you saw</p> <p>12 Section 3.10 for the first time?</p> <p>13 A. The first time I saw the</p> <p>14 document.</p> <p>15 Q. Okay. Do you recall the</p> <p>16 circumstances under which you reviewed</p> <p>17 Section 3.10?</p> <p>18 A. Prior to signing the document.</p> <p>19 Q. Do you see there is a reference</p> <p>20 in the document in Section 3.10 to majority</p> <p>21 interest?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Do you have an understanding of</p> <p>24 what that term means?</p> <p>25 A. Class A shareholders -- limited</p>



<p>Page 150</p> <p>1 N. Dondero</p> <p>2 partners. I apologize.</p> <p>3 Q. And what is the basis for that</p> <p>4 understanding?</p> <p>5 A. Because the class A limited</p> <p>6 partners is the majority interest. Holds</p> <p>7 – I'm sorry, holds the majority interest.</p> <p>8 Q. And did you ever discuss that</p> <p>9 with anybody at any time?</p> <p>10 MS. DEITSCH-PEREZ: And I'm going</p> <p>11 to direct her to ask exclude any</p> <p>12 discussions with lawyers. So other –</p> <p>13 MR. MORRIS: Let me rephrase the</p> <p>14 question. Let me rephrase the</p> <p>15 question.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Did you ever discuss the</p> <p>18 definition of majority interest with</p> <p>19 anybody at any time prior to the petition</p> <p>20 date?</p> <p>21 A. I don't recall.</p> <p>22 Q. Do you believe that Dugaboy holds</p> <p>23 a majority interest, as that term is used</p> <p>24 in Section 3.10?</p> <p>25 A. Yes, I do believe that.</p>	<p>Page 151</p> <p>1 N. Dondero</p> <p>2 Q. And did you believe that prior to</p> <p>3 the petition date?</p> <p>4 A. Yes.</p> <p>5 Q. What was the basis for your</p> <p>6 belief prior to the petition date that</p> <p>7 Dugaboy held a majority interest?</p> <p>8 A. I was told that Dugaboy held the</p> <p>9 majority interest.</p> <p>10 Q. And who told you that Dugaboy</p> <p>11 held the majority interest?</p> <p>12 A. Melissa Schroth.</p> <p>13 Q. Do you recall when Ms. Schroth</p> <p>14 told you that?</p> <p>15 A. Shortly after I became trustee.</p> <p>16 Q. And can you tell me who Melissa</p> <p>17 Schroth is?</p> <p>18 A. Melissa is a financial assistant</p> <p>19 with Jim.</p> <p>20 Q. And you communicated with</p> <p>21 Ms. Schroth on a regular basis prior to the</p> <p>22 petition date; is that fair?</p> <p>23 A. Correct.</p> <p>24 Q. Do you know, is Ms. Schroth a</p> <p>25 lawyer?</p>
<p>Page 152</p> <p>1 N. Dondero</p> <p>2 A. I don't believe so.</p> <p>3 Q. Do you know anything about her</p> <p>4 background or expertise?</p> <p>5 A. Accounting, I believe.</p> <p>6 Q. Did you ever do anything to</p> <p>7 corroborate what Ms. Schroth told you about</p> <p>8 Dugaboy being a majority interest?</p> <p>9 A. I had no reason to disbelieve</p> <p>10 her.</p> <p>11 Q. But you didn't do anything to</p> <p>12 corroborate that; is that right?</p> <p>13 A. I did not, sir.</p> <p>14 Q. Did you seek any advice from</p> <p>15 anybody to ascertain whether what</p> <p>16 Ms. Schroth told you was accurate?</p> <p>17 A. I don't recall.</p> <p>18 Q. Okay. Do you see at the end of</p> <p>19 Section 3.10, there is a reference to NAV</p> <p>20 trigger period?</p> <p>21 A. Yes.</p> <p>22 Q. Do you have an understanding –</p> <p>23 withdrawn.</p> <p>24 Did you have an understanding</p> <p>25 prior to the petition date of what a NAV</p>	<p>Page 153</p> <p>1 N. Dondero</p> <p>2 trigger period was?</p> <p>3 A. No.</p> <p>4 Q. Did you ever ask anybody prior to</p> <p>5 the petition date what a NAV trigger period</p> <p>6 was?</p> <p>7 A. I don't believe so.</p> <p>8 Q. Did you or Dugaboy make any</p> <p>9 effort prior to the petition date to</p> <p>10 ascertain whether a NAV trigger period had</p> <p>11 occurred?</p> <p>12 A. I don't believe so.</p> <p>13 Q. Did you or Dugaboy ever know</p> <p>14 prior to the petition date whether in fact</p> <p>15 a NAV trigger period had ever occurred?</p> <p>16 A. I don't think so.</p> <p>17 Q. All right.</p> <p>18 MR. MORRIS: I think if it's okay</p> <p>19 with you guys, now might be a nice time</p> <p>20 to take a lunch break.</p> <p>21 I prefer that it not be too</p> <p>22 extended. Would it be okay if we came</p> <p>23 back at the bottom of the hour?</p> <p>24 THE WITNESS: 1:30, would that be</p> <p>25 okay?</p>

<p>Page 154</p> <p>1 N. Dondero</p> <p>2 MR. MORRIS: Yeah, 1:30 Central.</p> <p>3 Is that good?</p> <p>4 THE WITNESS: That would be</p> <p>5 great. Thank you.</p> <p>6 MR. MORRIS: Thanks so much.</p> <p>7 THE VIDEOGRAPHER: The time is</p> <p>8 12:54. We're going off the record.</p> <p>9 (Recess is taken.)</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 155</p> <p>1 N. Dondero</p> <p>2 AFTERNOON SESSION</p> <p>3 (Time noted: 1:35 p.m.)</p> <p>4 THE VIDEOGRAPHER: The time is</p> <p>5 1:35. We are back on the record.</p> <p>6 * * *</p> <p>7 NANCY DONDERO, resumed and</p> <p>8 testified as follows:</p> <p>9 EXAMINATION BY (Cont'd.)</p> <p>10 MR. MORRIS:</p> <p>11 Q. Ms. Dondero, are you ready to</p> <p>12 proceed?</p> <p>13 A. I am.</p> <p>14 MR. MORRIS: Are you Deborah?</p> <p>15 MS. DEITSCH-PEREZ: (Nodding.)</p> <p>16 MR. MORRIS: Okay. Thank you.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. Can you hear me okay?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Okay. I've switched from my</p> <p>21 phone to my computer. Somehow it worked.</p> <p>22 Now I wanted to make sure you can hear me.</p> <p>23 Ms. Dondero, did you speak to</p> <p>24 anybody during the break about the</p> <p>25 substance of your testimony?</p>
<p>Page 156</p> <p>1 N. Dondero</p> <p>2 A. No, sir.</p> <p>3 Q. Did you speak to anybody during</p> <p>4 the break regarding the substance of this</p> <p>5 deposition in any way?</p> <p>6 A. No, sir.</p> <p>7 Q. Okay. When we left, we had just</p> <p>8 looked at Section 3.10 of the LP agreement.</p> <p>9 Do you remember that?</p> <p>10 A. Yes.</p> <p>11 Q. Is there anything about the LP</p> <p>12 agreement that you – withdrawn.</p> <p>13 Is there anything that you or</p> <p>14 Dugaboy don't understand about Section 3.10</p> <p>15 of the LP agreement?</p> <p>16 MS. DEITSCH-PEREZ: Object to the</p> <p>17 form.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. You can answer.</p> <p>20 A. No.</p> <p>21 Q. Is there any aspect of Section</p> <p>22 3.10 that you and Dugaboy thinks is</p> <p>23 ambiguous?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>	<p>Page 157</p> <p>1 N. Dondero</p> <p>2 A. No.</p> <p>3 Q. Let's switch gears now and let's</p> <p>4 talk about the oral agreement that's been</p> <p>5 referred to in this litigation.</p> <p>6 I'd like to put up on the screen</p> <p>7 a document that you don't have a hard copy</p> <p>8 of, or at least I didn't give it to you,</p> <p>9 and that would be the Amended Complaint</p> <p>10 that was served by Highland against you and</p> <p>11 your brother and Dugaboy.</p> <p>12 MR. MORRIS: And that document</p> <p>13 we're marking for purposes of the</p> <p>14 deposition as Exhibit No. 31.</p> <p>15 (N. Dondero Exhibit 31, Defendant</p> <p>16 James Donder's Answer to Amended</p> <p>17 Complaint, marked for identification,</p> <p>18 as of this date.)</p> <p>19 MR. MORRIS: Can we put that on</p> <p>20 the screen, please, and turn to</p> <p>21 paragraph 82?</p> <p>22 Actually, stop right there.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. Ms. Dondero, have you ever seen,</p> <p>25 if we can scroll up – and, again, this is</p>

<p>Page 158</p> <p>1 N. Dondero</p> <p>2 consistent with what I explained to you at</p> <p>3 the beginning of the deposition.</p> <p>4 I don't mean to rush you. I</p> <p>5 think you should take all the time you need</p> <p>6 to look at this document if you want to,</p> <p>7 but my first question is simply whether you</p> <p>8 have ever seen this document before. And</p> <p>9 if you need to see more of it, just let me</p> <p>10 know.</p> <p>11 (Document review.)</p> <p>12 A. Can you scroll to the next page,</p> <p>13 John, please?</p> <p>14 Q. Sure.</p> <p>15 (Document review.)</p> <p>16 MS. DEITSCH-PEREZ: I have a hard</p> <p>17 copy here I could give the witness.</p> <p>18 Do you want me to do that?</p> <p>19 MR. MORRIS: Sure.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. And just for clarity,</p> <p>22 Ms. Dondero, this is the Amended Complaint</p> <p>23 that Highland served to collect on the</p> <p>24 notes that were issued by your brother.</p> <p>25 A. Okay.</p>	<p>Page 159</p> <p>1 N. Dondero</p> <p>2 MS. CANTY: John, I'm sorry. 31</p> <p>3 is actually the answer to the Amended</p> <p>4 Complaint.</p> <p>5 MR. MORRIS: I'm sorry. I</p> <p>6 apologize that. Let me restate that.</p> <p>7 Exhibit 31 is the answer,</p> <p>8 Mr. Dondero's answer to the Amended</p> <p>9 Complaint.</p> <p>10 MS. DEITSCH-PEREZ: All right.</p> <p>11 So what are you asking if she has seen?</p> <p>12 I was going to hand her the complaint.</p> <p>13 MR. MORRIS: It's my mistake,</p> <p>14 Deborah. If we can go back to – if we</p> <p>15 can go back to the top.</p> <p>16 Let me start this over.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. Do you see, Ms. Dondero, that</p> <p>19 this is defendant James Dondero's answer to</p> <p>20 Amended Complaint?</p> <p>21 A. Yes, I see that.</p> <p>22 Q. Have you ever seen your brother's</p> <p>23 answer to the Amended Complaint?</p> <p>24 A. I don't remember if I've seen</p> <p>25 this or not. Deborah just gave me a hard</p>
<p>Page 160</p> <p>1 N. Dondero</p> <p>2 copy. Can I have a quick minute to glance</p> <p>3 over it?</p> <p>4 Q. Sure. Take your time. And let</p> <p>5 me know at the top of it, what the docket</p> <p>6 number is.</p> <p>7 A. Certainly.</p> <p>8 Docket No. DOC 83 –</p> <p>9 Q. Okay. Perfect.</p> <p>10 A. – filed on December 3rd.</p> <p>11 Is that it?</p> <p>12 Q. Yes. So we are looking at the</p> <p>13 same thing.</p> <p>14 MR. MORRIS: And this document is</p> <p>15 going to be marked as Exhibit 31.</p> <p>16 A. Okay.</p> <p>17 Q. All right. Have you seen this</p> <p>18 document before?</p> <p>19 A. I think so.</p> <p>20 Q. Okay.</p> <p>21 MR. MORRIS: I'm going to ask, La</p> <p>22 Asia go to paragraph 82.</p> <p>23 A. Okay.</p> <p>24 Q. Do you see paragraph 82 is up on</p> <p>25 the screen?</p>	<p>Page 161</p> <p>1 N. Dondero</p> <p>2 A. Yes, sir.</p> <p>3 Q. So I'm going to read a portion of</p> <p>4 it to you beginning at the very top, okay?</p> <p>5 I just want you to follow along</p> <p>6 with me.</p> <p>7 Paragraph 82 says in part,</p> <p>8 "Plaintiff's claims are barred in whole or</p> <p>9 in part because prior to the demands for</p> <p>10 payment, plaintiff agreed that it would not</p> <p>11 collect the notes upon fulfillment of</p> <p>12 condition subsequent. Specifically,</p> <p>13 sometime between December of the year in</p> <p>14 which each note was made and February the</p> <p>15 following year, Defendant Nancy Dondero, as</p> <p>16 representative for a majority of the Class</p> <p>17 A shareholders of plaintiff agreed that</p> <p>18 plaintiff would forgive the notes if</p> <p>19 certain portfolio companies were sold for</p> <p>20 greater than cost or on a basis outside of</p> <p>21 defendant James Dondero's control. The</p> <p>22 purpose of this agreement was to provide</p> <p>23 compensation to defendant James Dondero,</p> <p>24 who was otherwise underpaid compared to</p> <p>25 reasonable compensation levels in the</p>

<p>Page 162</p> <p>1 N. Dondero</p> <p>2 industry through the use of forgivable</p> <p>3 loans, a practice that was standard at</p> <p>4 HCMLP and in the industry."</p> <p>5 Have I read that correctly?</p> <p>6 A. Um-hmm, yes.</p> <p>7 Q. Okay. To the best of your</p> <p>8 knowledge, is the portion of paragraph 82</p> <p>9 that I just read true and accurate?</p> <p>10 A. Yes. Correct.</p> <p>11 Q. Are you aware, as Dugaboy's</p> <p>12 30(b)(6) witness, that HCRE, HCMS, and</p> <p>13 NexPoint all make the same allegation in</p> <p>14 defense?</p> <p>15 A. Yes.</p> <p>16 Q. So is it your testimony that the</p> <p>17 statement that I just read from paragraph</p> <p>18 82 applies to the promissory notes issued</p> <p>19 by HCRE, HCMS, and NexPoint, and that are</p> <p>20 the subject of the lawsuits?</p> <p>21 A. Yes.</p> <p>22 Q. So it's your testimony that you</p> <p>23 entered into oral agreements with your</p> <p>24 brother between December and the year each</p> <p>25 note was made, and February of the</p>	<p>Page 163</p> <p>1 N. Dondero</p> <p>2 following year, pursuant to which plaintiff</p> <p>3 agreed that plaintiff would forgive the</p> <p>4 notes if certain portfolio companies were</p> <p>5 sold for greater than cost or on a basis</p> <p>6 outside of James Dondero's control,</p> <p>7 correct?</p> <p>8 A. That is correct.</p> <p>9 Q. Can we refer to each of the oral</p> <p>10 agreements that you entered into with your</p> <p>11 brother concerning the promissory notes</p> <p>12 that are described in paragraph 82 as an</p> <p>13 agreement and collectively as the</p> <p>14 agreements?</p> <p>15 A. Certainly.</p> <p>16 MS. DEITSCH-PEREZ: Okay. And</p> <p>17 just, John, just so I don't have to</p> <p>18 object each time, when you say "you,"</p> <p>19 you're talking about Dugaboy?</p> <p>20 MR. MORRIS: I'm talking about</p> <p>21 both unless I say otherwise. But thank</p> <p>22 you for pointing that out.</p> <p>23 MS. DEITSCH-PEREZ: Okay.</p> <p>24 MR. DRAPER: John, just so you</p> <p>25 know, to the extent that – hold on.</p>
<p>Page 164</p> <p>1 N. Dondero</p> <p>2 I'm muted.</p> <p>3 To the extent Deborah raises an</p> <p>4 objection for the "you," Nancy, as a</p> <p>5 trustee, I'm not going to say anything,</p> <p>6 but my objection is a follow-on for the</p> <p>7 same thing, for the same reasons.</p> <p>8 MR. MORRIS: Okay. I appreciate</p> <p>9 that, Douglas.</p> <p>10 So I'm going to ask the question</p> <p>11 again.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. Is it your testimony that you, as</p> <p>14 the trustee of The Dugaboy Investment</p> <p>15 Trust, entered into oral agreements with</p> <p>16 your brother between December and the year</p> <p>17 each note was made and February of the</p> <p>18 following year, pursuant to which plaintiff</p> <p>19 agreed that plaintiff would forgive the</p> <p>20 notes if certain portfolio companies were</p> <p>21 sold for greater than cost or on a basis</p> <p>22 outside of James Dondero's control?</p> <p>23 A. That is correct.</p> <p>24 Q. Okay. And can we refer to each</p> <p>25 of the oral agreements that are the subject</p>	<p>Page 165</p> <p>1 N. Dondero</p> <p>2 of paragraph 82 individually as an</p> <p>3 agreement and collectively as the</p> <p>4 agreements?</p> <p>5 A. Um-hmm. Yes.</p> <p>6 Q. Is that a yes?</p> <p>7 A. Yes. That is a yes. Sorry.</p> <p>8 Q. And do you and Dugaboy understand</p> <p>9 that the phrase "plaintiff" in paragraph 82</p> <p>10 refers to Highland?</p> <p>11 A. Yes.</p> <p>12 Q. And do you and Dugaboy understand</p> <p>13 that Dugaboy, as the representative of a</p> <p>14 majority of the Class A shareholders of</p> <p>15 Highland is the actual entity that entered</p> <p>16 into the agreements on behalf of Highland?</p> <p>17 A. Yes.</p> <p>18 Q. And you are the trustee of</p> <p>19 Dugaboy today, correct?</p> <p>20 A. Correct.</p> <p>21 Q. And you were the trustee of</p> <p>22 Dugaboy at the time each of the agreements</p> <p>23 referred to in paragraph 82 was entered</p> <p>24 into, correct?</p> <p>25 A. Correct.</p>

<p>Page 166</p> <p>1 N. Dondero</p> <p>2 Q. And you personally caused Dugaboy</p> <p>3 to enter into each agreement that is</p> <p>4 referred to in paragraph 82, correct?</p> <p>5 MS. DEITSCH-PEREZ: Object to the</p> <p>6 form.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. You can answer.</p> <p>9 MS. DEITSCH-PEREZ: I'm sorry,</p> <p>10 John, can you repeat the question,</p> <p>11 please?</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. You personally caused Dugaboy to</p> <p>14 enter into each of the agreements that's</p> <p>15 referred to in paragraph 82, correct?</p> <p>16 MS. DEITSCH-PEREZ: Object to the</p> <p>17 form.</p> <p>18 A. Correct.</p> <p>19 Q. What is Dugaboy?</p> <p>20 A. The trust, the living</p> <p>21 maintenance, education, and health trust.</p> <p>22 Q. Do you know when it was formed?</p> <p>23 A. 2010.</p> <p>24 Q. Have you been the trustee of the</p> <p>25 Dugaboy Trust since the time it was</p>	<p>Page 167</p> <p>1 N. Dondero</p> <p>2 created?</p> <p>3 A. No.</p> <p>4 Q. Who preceded you as trustee, to</p> <p>5 the best of your knowledge?</p> <p>6 A. I don't know.</p> <p>7 Q. Did you ever ask anybody who</p> <p>8 preceded you as trustee of The Dugaboy</p> <p>9 Investment Trust?</p> <p>10 A. Did I ever ask who was the</p> <p>11 trustee prior to –</p> <p>12 Q. Yes.</p> <p>13 A. I did not.</p> <p>14 Q. Okay. Do you recall when you</p> <p>15 became the trustee of the Dugaboy Trust?</p> <p>16 A. October 2015.</p> <p>17 Q. Did somebody appoint you to be</p> <p>18 trustee of the Dugaboy Trust?</p> <p>19 A. By "appoint," do you mean asked</p> <p>20 me to be?</p> <p>21 Q. Okay. Let me restate the</p> <p>22 question.</p> <p>23 A. Sorry.</p> <p>24 Q. Do you know how you became the</p> <p>25 trustee of the Dugaboy Trust?</p>
<p>Page 168</p> <p>1 N. Dondero</p> <p>2 A. Jim had asked me to.</p> <p>3 Q. Did Jim ask you to be the Dugaboy</p> <p>4 trustee at around the same time that you</p> <p>5 became the trustee?</p> <p>6 A. That's correct.</p> <p>7 Q. Prior to accepting Jim's –</p> <p>8 withdrawn.</p> <p>9 Did you agree to become the</p> <p>10 trustee at the Dugaboy Trust in response to</p> <p>11 Jim's request?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay. Before you accepted the</p> <p>14 appointment as trustee of the Dugaboy</p> <p>15 Trust, did you obtain any information about</p> <p>16 the purpose of the Dugaboy Trust?</p> <p>17 A. Yes.</p> <p>18 Q. What information do you recall</p> <p>19 obtaining before you agreed to serve as the</p> <p>20 trustee at the Dugaboy Trust?</p> <p>21 A. The purpose of the trust is to</p> <p>22 provide health, education, maintenance,</p> <p>23 lifestyle for the beneficiaries, who is my</p> <p>24 brother, for as long as he lives and then</p> <p>25 his children and subsequent generations.</p>	<p>Page 169</p> <p>1 N. Dondero</p> <p>2 Q. Is your brother the sole</p> <p>3 beneficiary of the Dugaboy Trust during his</p> <p>4 lifetime?</p> <p>5 A. Yes.</p> <p>6 Q. Did you make any independent</p> <p>7 decisions with respect to the Dugaboy</p> <p>8 Trust?</p> <p>9 A. Of course.</p> <p>10 Q. Do you know if the Dugaboy Trust</p> <p>11 owned an interest in Highland at the time</p> <p>12 Dugaboy entered into each of the agreements</p> <p>13 referred to in paragraph 82?</p> <p>14 A. Okay. I'm sorry. Say that</p> <p>15 again, John.</p> <p>16 Q. Do you know whether Dugaboy owned</p> <p>17 an interest in Highland at the time each</p> <p>18 agreement was entered into?</p> <p>19 MS. DEITSCH-PEREZ: Other than</p> <p>20 what she's already testified to?</p> <p>21 A. Other than it being a major Class</p> <p>22 A shareholder, John? A limited partner.</p> <p>23 Q. I'm sorry, it's a little bit of a</p> <p>24 different question.</p> <p>25 A. Okay.</p>



<p>Page 170</p> <p>1 N. Dondero</p> <p>2 Q. You entered into more than one</p> <p>3 agreement with your brother; is that right?</p> <p>4 A. That's correct.</p> <p>5 Q. How many agreements did you enter</p> <p>6 into with him?</p> <p>7 A. Okay. How many notes or how many</p> <p>8 agreements – you mean, per – one per year</p> <p>9 for three years covering 13 notes.</p> <p>10 Q. So there's three annual</p> <p>11 agreements that you recall? Do I have that</p> <p>12 right?</p> <p>13 A. Correct.</p> <p>14 Q. And was Dugaboy's interest in</p> <p>15 Highland the same at each moment that you</p> <p>16 entered into each of the three agreements?</p> <p>17 A. I'm sorry?</p> <p>18 Q. Do you know whether – do you</p> <p>19 know whether Dugaboy's interest in Highland</p> <p>20 changed at all between the time that you</p> <p>21 entered into each of the three agreements</p> <p>22 that you just referred to?</p> <p>23 A. I don't know. I don't think so.</p> <p>24 Q. Did you ever ask anybody at any</p> <p>25 time prior to the petition date if</p>	<p>Page 171</p> <p>1 N. Dondero</p> <p>2 Dugaboy's interest in Highland changed at</p> <p>3 any time during the period in which you</p> <p>4 were entering into these agreements on</p> <p>5 behalf of Dugaboy?</p> <p>6 A. No.</p> <p>7 And, John, can I back up for a</p> <p>8 second?</p> <p>9 Q. Sure.</p> <p>10 A. Just in answer to one of my</p> <p>11 questions when I said that I had three</p> <p>12 conversations with Jim. That pertained to</p> <p>13 this procedure. That's my answer for this</p> <p>14 scope.</p> <p>15 Q. Right.</p> <p>16 A. Okay. Just so we're on the same</p> <p>17 page. Okay. Okay.</p> <p>18 Q. And do you recall – we'll get to</p> <p>19 it.</p> <p>20 All right. So you entered into</p> <p>21 three agreements.</p> <p>22 Do I have that right?</p> <p>23 A. Correct.</p> <p>24 Q. And do you recall when you</p> <p>25 entered into each one of the three</p>
<p>Page 172</p> <p>1 N. Dondero</p> <p>2 agreements?</p> <p>3 A. To the best of my recollection,</p> <p>4 it was around the holidays.</p> <p>5 Q. Do you remember the year you</p> <p>6 entered into the first agreement?</p> <p>7 A. It would have been either been</p> <p>8 the tail end of '17, beginning of '18.</p> <p>9 Q. And would the second agreement be</p> <p>10 the tail of '18, the beginning of '19?</p> <p>11 A. Correct, sir.</p> <p>12 Q. And would the third one be the</p> <p>13 tail of '19 and the beginning of '20?</p> <p>14 A. Either/or. Correct. Um-hmm.</p> <p>15 Q. Okay. And when we say late in</p> <p>16 each year, is paragraph 82 correct, to the</p> <p>17 best of your knowledge, that it was either</p> <p>18 December of the year or the following</p> <p>19 January or February?</p> <p>20 A. Correct.</p> <p>21 Q. So it's your recollection that as</p> <p>22 the trustee of The Dugaboy Investment</p> <p>23 Trust, you entered into an agreement</p> <p>24 pursuant to 3.10 of the LP agreement in</p> <p>25 either December 2019 or January or February</p>	<p>Page 173</p> <p>1 N. Dondero</p> <p>2 of 2020?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. So you entered into that</p> <p>5 third agreement after the petition date.</p> <p>6 Do I have that right?</p> <p>7 A. That's correct.</p> <p>8 Q. Do you recall that there came a</p> <p>9 time in January of 2020 when your brother</p> <p>10 relinquished control of Highland in favor</p> <p>11 of an independent board?</p> <p>12 A. January of '20, yes. Um-hmm.</p> <p>13 Q. Do you recall if the agreement</p> <p>14 that you entered into in late 2019 or early</p> <p>15 2020 occurred before or after your brother</p> <p>16 surrendered control of Highland?</p> <p>17 A. I believe it was before.</p> <p>18 Q. So sometime in December of 2019</p> <p>19 or prior to the date in January when your</p> <p>20 brother surrendered control, you and your</p> <p>21 brother entered into the third in the</p> <p>22 series of three oral agreements that are</p> <p>23 referred to in paragraph 82, correct?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. Do you recall what the</p>

<p>Page 174</p> <p>1 N. Dondero</p> <p>2 terms of each of the oral agreements was?</p> <p>3 A. They were all the same, the</p> <p>4 agreements. Obviously for different notes.</p> <p>5 But the terms were that the notes would be</p> <p>6 forgiven if any of the three portfolio</p> <p>7 companies that we discussed earlier,</p> <p>8 Trussway, Cornerstone, MGM, would monetize</p> <p>9 at a higher value, and then the notes would</p> <p>10 be forgiven and considered deferred</p> <p>11 compensation.</p> <p>12 Q. And when you say a higher value,</p> <p>13 did you understand at the time you entered</p> <p>14 into the agreements what higher value</p> <p>15 meant?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. What does higher value</p> <p>18 mean in the context of the agreements that</p> <p>19 you entered into with your brother?</p> <p>20 A. Higher than the purchase price.</p> <p>21 Q. So do I have this correct that if</p> <p>22 one of the three portfolio companies was</p> <p>23 sold for a value that exceeded the cost by</p> <p>24 at least one dollar, then all of the notes</p> <p>25 that were subject to the agreements would</p>	<p>Page 175</p> <p>1 N. Dondero</p> <p>2 be forgiven?</p> <p>3 A. That's correct.</p> <p>4 Q. Okay. Can you identify the</p> <p>5 promissory notes that were the subject of</p> <p>6 each of the three agreements?</p> <p>7 A. I don't understand by identified,</p> <p>8 John. In your book or –</p> <p>9 Q. Are you able to list for me the</p> <p>10 promissory notes –</p> <p>11 A. Sure –</p> <p>12 Q. Let me finish the question,</p> <p>13 please.</p> <p>14 Are you able to list for me the</p> <p>15 promissory notes that were the subject of</p> <p>16 each of the three agreements?</p> <p>17 A. In 2017, there were four notes:</p> <p>18 One to NexPoint, two to HCRE, I believe,</p> <p>19 and one to HCMS. I don't have specifics,</p> <p>20 but I believe the four of them originally</p> <p>21 totaled somewhere near 60 million, in that</p> <p>22 ballpark, when they were originally set up.</p> <p>23 That was 2017.</p> <p>24 MS. DEITSCH-PEREZ: John, we have</p> <p>25 a list.</p>
<p>Page 176</p> <p>1 N. Dondero</p> <p>2 Do you want her to do this from</p> <p>3 memory or do you want her to look –</p> <p>4 MR. MORRIS: I don't. I'm going</p> <p>5 to try it a different way, Deborah.</p> <p>6 MS. DEITSCH-PEREZ: Okay.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Is there – did the three oral</p> <p>9 agreements with your brother –</p> <p>10 A. Yes?</p> <p>11 Q. – cover all of the promissory</p> <p>12 notes that are subject of the lawsuits in</p> <p>13 which are a defendant?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know if any of the three</p> <p>16 agreements you entered into with your</p> <p>17 brother cover any promissory notes that are</p> <p>18 not the subject of the lawsuits in which</p> <p>19 you are a defendant?</p> <p>20 MS. DEITSCH-PEREZ: Object to the</p> <p>21 form.</p> <p>22 A. I don't believe they do.</p> <p>23 Q. Okay. So to the best of your</p> <p>24 knowledge, as the person who caused Dugaboy</p> <p>25 to enter into these agreements on behalf of</p>	<p>Page 177</p> <p>1 N. Dondero</p> <p>2 Highland, you do not believe that your</p> <p>3 agreements covered any promissory note that</p> <p>4 is the subject of the lawsuits that have</p> <p>5 been commenced against you, correct?</p> <p>6 MS. DEITSCH-PEREZ: Wait. Can</p> <p>7 you – I think you – can you have the</p> <p>8 court reporter read it back so you can</p> <p>9 hear it? Because either I heard it</p> <p>10 wrong or you misspoke, I think.</p> <p>11 THE REPORTER: I can read it</p> <p>12 back, if you'd like.</p> <p>13 MR. MORRIS: Sure.</p> <p>14 MS. DEITSCH-PEREZ: Yeah,</p> <p>15 Annette, can you read it back?</p> <p>16 THE REPORTER: Sure.</p> <p>17 (Question was read back as</p> <p>18 follows:</p> <p>19 "QUESTION: Okay. So to the best</p> <p>20 of your knowledge, as the person who</p> <p>21 caused Dugaboy to enter into these</p> <p>22 agreements on behalf of Highland, you</p> <p>23 do not believe that your agreements</p> <p>24 covered any promissory note that is the</p> <p>25 subject of the lawsuits that have been</p>

<p style="text-align: right;">Page 178</p> <p>1 N. Dondero</p> <p>2 commenced against you, correct?"</p> <p>3 MR. MORRIS: All right. Let me</p> <p>4 ask the question again. Let me ask the</p> <p>5 question again.</p> <p>6 MS. DEITSCH-PEREZ: Okay.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Ms. Dondero, as the person who</p> <p>9 caused Dugaboy to enter into the agreements</p> <p>10 described in paragraph 82 on behalf of</p> <p>11 Highland, do you have any reason to believe</p> <p>12 that those agreements related to any</p> <p>13 promissory notes that are not the subject</p> <p>14 of the lawsuits that have been commenced</p> <p>15 against you and Dugaboy?</p> <p>16 A. No.</p> <p>17 Q. Okay.</p> <p>18 A. I believe they include the notes</p> <p>19 that we've been referring to, that we've</p> <p>20 been talking to about all day, John.</p> <p>21 Q. Okay. Did you or Dugaboy ever</p> <p>22 make a list of the promissory notes that</p> <p>23 were the subject of each agreement –</p> <p>24 withdrawn.</p> <p>25 Prior to the petition date, did</p>	<p style="text-align: right;">Page 179</p> <p>1 N. Dondero</p> <p>2 you or Dugaboy ever make a list of the</p> <p>3 promissory notes that were the subject of</p> <p>4 each agreement?</p> <p>5 MS. DEITSCH-PEREZ: Object to the</p> <p>6 form.</p> <p>7 A. I don't recall.</p> <p>8 Q. You have no recollection of you</p> <p>9 or Dugaboy ever writing down the promissory</p> <p>10 notes that were the subject of any of the</p> <p>11 three oral agreements that Dugaboy entered</p> <p>12 into with your brother, correct?</p> <p>13 A. I don't believe I did.</p> <p>14 Q. And you don't believe Dugaboy did</p> <p>15 either, right?</p> <p>16 MS. DEITSCH-PEREZ: Object to the</p> <p>17 form.</p> <p>18 A. Correct.</p> <p>19 Q. Are you or Dugaboy aware of</p> <p>20 anything in writing that identifies –</p> <p>21 withdrawn.</p> <p>22 Are you and Dugaboy aware of</p> <p>23 anything that was written prior to the</p> <p>24 petition date that identified the</p> <p>25 promissory notes that were the subject of</p>
<p style="text-align: right;">Page 180</p> <p>1 N. Dondero</p> <p>2 each agreement that was entered into?</p> <p>3 A. Am I aware of anything that was</p> <p>4 written down not by me?</p> <p>5 Q. Right.</p> <p>6 A. Nothing that I can recall at this</p> <p>7 time.</p> <p>8 Q. How do you know that the</p> <p>9 promissory notes that are the subject of</p> <p>10 the lawsuits against you were all subject</p> <p>11 to the oral agreements that you entered</p> <p>12 into on behalf of Dugaboy with your</p> <p>13 brother?</p> <p>14 A. Of the 13 notes in total, we</p> <p>15 discussed 4 and 17; 6 and 18; and 3 in 19,</p> <p>16 and that's total, if I'm not mistaken, the</p> <p>17 13 notes in question.</p> <p>18 Q. Okay. Now neither you nor</p> <p>19 Dugaboy ever saw any of the notes prior to</p> <p>20 the petition date, correct?</p> <p>21 MS. DEITSCH-PEREZ: Object to the</p> <p>22 form.</p> <p>23 A. That's correct.</p> <p>24 Q. And neither you nor Dugaboy are</p> <p>25 aware of any writing that was created prior</p>	<p style="text-align: right;">Page 181</p> <p>1 N. Dondero</p> <p>2 to the petition date that identified the</p> <p>3 promissory notes that were the subject of</p> <p>4 the agreements between Dugaboy and your</p> <p>5 brother, correct?</p> <p>6 A. That is correct.</p> <p>7 Q. So are you basing your belief</p> <p>8 that the agreements covered only the</p> <p>9 promissory notes that are the subject of</p> <p>10 the lawsuits on your memory or on anything</p> <p>11 else?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form.</p> <p>14 MR. MORRIS: Withdrawn.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. What is the basis for your belief</p> <p>17 that the agreements covered the promissory</p> <p>18 notes that are the subject of each – of</p> <p>19 the lawsuits against you and Dugaboy?</p> <p>20 A. Because I remember what we</p> <p>21 discussed.</p> <p>22 Q. So you have a memory. You</p> <p>23 remember that three to four years ago, you</p> <p>24 can remember the promissory notes that were</p> <p>25 the subject of your first agreement even</p>

<p>Page 182</p> <p>1 N. Dondero</p> <p>2 though you never saw the notes? Do I have</p> <p>3 that right?</p> <p>4 A. I remember the amount. I don't</p> <p>5 remember all the specifics from that many</p> <p>6 years ago, John, but I do remember the</p> <p>7 amount per each year, and I knew that there</p> <p>8 were 13 in total.</p> <p>9 Q. Who identified the notes that</p> <p>10 would be the subject of the agreements? Do</p> <p>11 you recall?</p> <p>12 A. In what context who identified</p> <p>13 them?</p> <p>14 Q. Well, the agreement was entered</p> <p>15 into twin in your capacity as the trustee</p> <p>16 of Dugaboy and your brother, correct?</p> <p>17 A. Correct.</p> <p>18 Q. As between you and your brother,</p> <p>19 did one of you identify the notes that</p> <p>20 would be the subject of the agreements?</p> <p>21 A. Yes, that would be –</p> <p>22 Q. And who identified – okay. And</p> <p>23 who was that?</p> <p>24 A. Jim.</p> <p>25 Q. And during these three</p>	<p>Page 183</p> <p>1 N. Dondero</p> <p>2 conversations, did he describe for you the</p> <p>3 notes that were going to be the subject of</p> <p>4 the conversation?</p> <p>5 A. Yes.</p> <p>6 Q. I apologize. I withdraw the</p> <p>7 question.</p> <p>8 Did your brother describe for you</p> <p>9 the notes that were going to be the subject</p> <p>10 of each agreement?</p> <p>11 A. Yes.</p> <p>12 Q. Do you have any basis for knowing</p> <p>13 which agreements – no. Withdrawn.</p> <p>14 Do you have any basis for knowing</p> <p>15 which notes are the subject of the</p> <p>16 agreements other than what your brother</p> <p>17 told you in the three – in the</p> <p>18 conversations that led to the three</p> <p>19 agreements?</p> <p>20 A. No, I don't believe so.</p> <p>21 Q. Did your brother explain to you</p> <p>22 why he selected these notes that are the</p> <p>23 subject of the lawsuits for inclusion in</p> <p>24 the agreements?</p> <p>25 A. Not that I recall.</p>
<p>Page 184</p> <p>1 N. Dondero</p> <p>2 MR. MORRIS: I'd like to put up</p> <p>3 on the screen a document that's been</p> <p>4 marked as Exhibit 43.</p> <p>5 (N. Dondero Exhibit 43,</p> <p>6 Promissory Note, Bates-stamped</p> <p>7 D-CNL000550 through 551, marked for</p> <p>8 identification, as of this date.)</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. And do you see, Ms. Dondero, that</p> <p>11 this is a promissory note dated January 18,</p> <p>12 2018, in the amount of \$7,900,000?</p> <p>13 MR. MORRIS: And if we can scroll</p> <p>14 to the bottom so we could see the</p> <p>15 signature.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Do you see that that's been</p> <p>18 signed by your brother?</p> <p>19 A. I see that.</p> <p>20 Q. Have you ever seen this</p> <p>21 particular promissory note before?</p> <p>22 MR. MORRIS: And we can go back</p> <p>23 to the top.</p> <p>24 (Document review.)</p> <p>25 A. It doesn't look familiar, John.</p>	<p>Page 185</p> <p>1 N. Dondero</p> <p>2 Q. This note is not a note that's</p> <p>3 subject to your agreement with your</p> <p>4 brother, correct?</p> <p>5 A. Correct.</p> <p>6 Q. Do you know why?</p> <p>7 A. I do not.</p> <p>8 Q. And Highland has not sued anybody</p> <p>9 to collect under this note, to the best of</p> <p>10 your knowledge, correct?</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 A. I –</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. Withdrawn.</p> <p>16 Are you aware of any lawsuit that</p> <p>17 has been commenced by Highland to collect</p> <p>18 under this note?</p> <p>19 A. I am not aware of any.</p> <p>20 Q. When you entered into these</p> <p>21 agreements, did you have any understanding</p> <p>22 that the agreement would cover all of the</p> <p>23 notes that were executed by your brother or</p> <p>24 by other entities under the Highland</p> <p>25 umbrella?</p>

<p>Page 186</p> <p>1 N. Dondero</p> <p>2 MS. DEITSCH-PEREZ: Object to the</p> <p>3 form.</p> <p>4 A. John, can you repeat the</p> <p>5 question, please?</p> <p>6 Q. Sure.</p> <p>7 At the time that you entered into</p> <p>8 the agreements, did you have any</p> <p>9 understanding that the agreements would</p> <p>10 cover all notes executed by your brother,</p> <p>11 NexPoint, HCRE and HCMS?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Was it your understanding</p> <p>14 that all promissory notes would be covered?</p> <p>15 MS. DEITSCH-PEREZ: Do you mean</p> <p>16 all of the ones at issue here or all,</p> <p>17 like, including –</p> <p>18 MR. MORRIS: No.</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 MR. MORRIS: I thought I was</p> <p>22 clear, but I'll try it one more time.</p> <p>23 MS. DEITSCH-PEREZ: Please.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Was it your understanding that</p>	<p>Page 187</p> <p>1 N. Dondero</p> <p>2 when you entered into each of these</p> <p>3 agreements, that the agreements would cover</p> <p>4 every promissory note that was executed by</p> <p>5 your brother, by NexPoint, by HCMS, and by</p> <p>6 HCRE, irrespective of whether it wound up</p> <p>7 being part of the lawsuit?</p> <p>8 A. My understanding for the</p> <p>9 agreement I had with Jim is just for these</p> <p>10 13 notes.</p> <p>11 Q. Okay. So there may be other</p> <p>12 notes that Jim or NexPoint or HCRE or HCMS,</p> <p>13 there may be other notes that they</p> <p>14 executed, but if there are, they were not</p> <p>15 the subject of any of your agreements with</p> <p>16 your brother, correct?</p> <p>17 MS. DEITSCH-PEREZ: Object to the</p> <p>18 form.</p> <p>19 You mean any of the agreements</p> <p>20 that she's been testifying here today?</p> <p>21 MR. MORRIS: Yes. We've defined</p> <p>22 agreements, so unless there is a</p> <p>23 question, unless somebody wants to</p> <p>24 revisit the definition, we've defined</p> <p>25 it.</p>
<p>Page 188</p> <p>1 N. Dondero</p> <p>2 MS. DEITSCH-PEREZ: Okay. Got</p> <p>3 it. No.</p> <p>4 A. Um-hmm.</p> <p>5 Q. When you say "um-hmm," what could</p> <p>6 you mean?</p> <p>7 A. I'm sorry, John. The</p> <p>8 conversation got me away from the question.</p> <p>9 I'm sorry. I'm sorry.</p> <p>10 MS. DEITSCH-PEREZ: It's my</p> <p>11 fault.</p> <p>12 THE WITNESS: I'm sorry.</p> <p>13 A. Go ahead, John.</p> <p>14 MR. MORRIS: Can I have the last</p> <p>15 question read back, please.</p> <p>16 THE REPORTER: Sure.</p> <p>17 (Question was read back as</p> <p>18 follows:</p> <p>19 "QUESTION: Okay. So there may</p> <p>20 be other notes that Jim or NexPoint or</p> <p>21 HCRE or HCMS, there may be other notes</p> <p>22 that they executed, but if there are,</p> <p>23 they were not the subject of any of</p> <p>24 your agreements with your brother,</p> <p>25 correct?")</p>	<p>Page 189</p> <p>1 N. Dondero</p> <p>2 A. Correct.</p> <p>3 Q. Okay.</p> <p>4 A. I'm only speaking for these 13.</p> <p>5 Q. Okay. Do you recall whose idea</p> <p>6 it was to enter into each of the</p> <p>7 agreements?</p> <p>8 A. It was Jim's suggestion.</p> <p>9 Q. Okay. And did he call you to</p> <p>10 make the suggestion?</p> <p>11 A. Yes. At least one, if not two of</p> <p>12 the agreements were verbal or at least</p> <p>13 started verbally. And one I remember was</p> <p>14 in person.</p> <p>15 Q. Okay. Did you ever have any</p> <p>16 concerns that your brother might have a</p> <p>17 conflict of interest since he controlled</p> <p>18 both the borrower and the lender under each</p> <p>19 of these transactions?</p> <p>20 MS. DEITSCH-PEREZ: Object to the</p> <p>21 form.</p> <p>22 A. No.</p> <p>23 Q. Did it ever occur to you that</p> <p>24 your brother might have a conflict of</p> <p>25 interest since he controlled both the</p>



<p>Page 190</p> <p>1 N. Dondero 2 borrower and the lender in each of these 3 transactions? 4 MS. DEITSCH-PEREZ: Object to the 5 form. 6 A. I'm sorry, I thought I answered. 7 No. 8 Q. Yeah, the first question was 9 whether you had any concerns. And the 10 second question was did it ever occur to 11 you. 12 Did you understand that? 13 A. I did. 14 It didn't occur to me, and I 15 didn't have any concern. 16 Q. Okay. And I think you just 17 mentioned that your recollection is that 18 two of the agreements were reached on the 19 telephone, and one was reached in person; 20 is that right? 21 A. That's correct. 22 Q. Okay. The agreement that was 23 reached in person, where were you? 24 A. Florida. 25 Q. Where at?</p>	<p>Page 191</p> <p>1 N. Dondero 2 A. My house in Vero Beach. 3 Q. Was anybody else present during 4 this discussion? 5 A. Jim's kids, underage. My father, 6 who's elderly. Family. 7 Q. Do you have any reason to believe 8 that anybody was aware of the substance of 9 the discussion that you had with your 10 brother concerning the agreement? 11 A. No. 12 Q. The two other conversations that 13 you had on the phone, do you recall whether 14 any person participated in those 15 discussions other than your brother and 16 yourself? 17 A. No one else participated. 18 Q. Out of the three agreements that 19 you entered into, do you recall whether it 20 was the first, second, or third that was 21 entered into during a face-to-face meeting? 22 A. To the best of my recollection, 23 it would have been the end of '18, 24 beginning of '19. 25 Q. Were there any conversations –</p>
<p>Page 192</p> <p>1 N. Dondero 2 withdrawn. 3 So there were three agreements; 4 is that correct? 5 A. Through this discussion? 6 Q. Yes. 7 A. There are three agreements, yes. 8 Q. And all three agreements are oral 9 agreements, correct? 10 A. They're all oral. One in person 11 and two on the phone, yes. 12 Q. Okay. Were there any 13 communications concerning the scope or term 14 or terms of the proposed agreement that 15 took place before the day on which the 16 agreements were entered into? 17 MS. DEITSCH-PEREZ: Object to the 18 form. 19 BY MR. MORRIS: 20 Q. I just want to know if there were 21 any conversations or communications that 22 occurred prior to the entry of the three 23 agreements. 24 A. There could have been, John. 25 Q. I know there could have been.</p>	<p>Page 193</p> <p>1 N. Dondero 2 I'm asking what you remember. 3 A. I don't – at this time, I don't 4 know. 5 Q. Okay. Do you have any reason to 6 believe, as you sit here right now, that 7 there were any communications that occurred 8 prior to the three days in which you 9 entered into the three oral agreements? 10 A. There could have been. 11 Q. I appreciate that. I'm asking if 12 you have any recollection of any such 13 communications. 14 A. I'm not sure at this time, John. 15 Q. Were any of the oral agreements 16 ever the subject of negotiation? 17 A. I don't understand what you're 18 asking. 19 Q. Why don't you tell me what the 20 conversations were that led to each of the 21 agreements to the best that you can recall. 22 A. The conversations with my brother 23 that took place towards the end of each of 24 the years that we're discussing, they 25 started as general conversations about</p>

<p>Page 194</p> <p>1 N. Dondero</p> <p>2 business, about work. And Jim would bring</p> <p>3 up the loans that were done earlier in the</p> <p>4 year.</p> <p>5 He had stated in the conversation</p> <p>6 that he thought he was undercompensated for</p> <p>7 the work that he does and the time that he</p> <p>8 puts in. And he wanted those loans to be</p> <p>9 forgiven if any of the three portfolio</p> <p>10 companies that we talked about monetized at</p> <p>11 a higher value.</p> <p>12 Q. And you agreed with that?</p> <p>13 A. Well, it was – yes, I did agree</p> <p>14 with that proposal. I thought it was a</p> <p>15 win-win for everybody.</p> <p>16 Q. Did you ever propose any</p> <p>17 alternative to the proposal that your</p> <p>18 brother made that you just described?</p> <p>19 A. I did not.</p> <p>20 Q. Can you identify any provision of</p> <p>21 any of the agreements that you negotiated</p> <p>22 with your brother?</p> <p>23 A. I didn't negotiate, but Jim had</p> <p>24 concern, and rightfully so, that he would</p> <p>25 put in the work and the time and the effort</p>	<p>Page 195</p> <p>1 N. Dondero</p> <p>2 to increase the value of any of those</p> <p>3 portfolio companies and that factors that</p> <p>4 you mention you beyond his control might</p> <p>5 cause them to be sold at a value under the</p> <p>6 price that was paid for them and this deal</p> <p>7 would not happen.</p> <p>8 So hence, that part of the deal</p> <p>9 came up, but I don't know if I'd consider</p> <p>10 it a negotiation.</p> <p>11 MR. MORRIS: Okay. I'm going to</p> <p>12 move to strike.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. And I'm just going to ask you if</p> <p>15 you can identify any provision of any of</p> <p>16 the agreements that you recall being the</p> <p>17 subject of negotiation?</p> <p>18 A. I don't recall any part being a</p> <p>19 negotiation.</p> <p>20 Q. Who identified the portfolio</p> <p>21 companies that were the subject of each</p> <p>22 agreement?</p> <p>23 A. Jim.</p> <p>24 Q. Did you ask your brother why he</p> <p>25 selected those companies?</p>
<p>Page 196</p> <p>1 N. Dondero</p> <p>2 A. No.</p> <p>3 Q. Do you know why your brother</p> <p>4 selected those companies?</p> <p>5 A. I do not.</p> <p>6 Q. Did you ever suggest that</p> <p>7 different portfolio companies should be</p> <p>8 used?</p> <p>9 A. I did not.</p> <p>10 Q. Did you ask him if Highland had</p> <p>11 any other portfolio companies?</p> <p>12 A. I don't know.</p> <p>13 Q. And your brother is the person</p> <p>14 who proposed that all of the notes would be</p> <p>15 forgiven if one of the three portfolio</p> <p>16 companies was sold for greater than cost;</p> <p>17 is that right?</p> <p>18 A. That's correct.</p> <p>19 Q. Do you know whether your brother</p> <p>20 had a duty to maximize value at the time</p> <p>21 that you entered into the agreements with</p> <p>22 him?</p> <p>23 A. I don't know.</p> <p>24 Q. Did you ever ask anybody prior to</p> <p>25 entering into any of the agreements whether</p>	<p>Page 197</p> <p>1 N. Dondero</p> <p>2 your brother already had a duty to maximize</p> <p>3 value?</p> <p>4 A. I did not.</p> <p>5 Q. Did you ever make a</p> <p>6 counterproposal to the term of the</p> <p>7 agreement that said all of the notes would</p> <p>8 be forgiven if one of the portfolio</p> <p>9 companies was sold for greater than cost?</p> <p>10 A. I'm sorry, John. Once again, the</p> <p>11 question, please?</p> <p>12 Q. Sure.</p> <p>13 Did you or Dugaboy ever make a</p> <p>14 counterproposal to the provision in the</p> <p>15 agreements that all of the notes would be</p> <p>16 forgiven if one of the portfolio companies</p> <p>17 was sold above cost?</p> <p>18 A. Wasn't that his proposal? Jim's</p> <p>19 proposal?</p> <p>20 Q. It was his proposal. I think</p> <p>21 you've testified to that. And I'm asking</p> <p>22 you if you or Dugaboy ever made a</p> <p>23 counterproposal with respect to that</p> <p>24 particular provision?</p> <p>25 A. No.</p>

<p>Page 198</p> <p>1 N. Dondero</p> <p>2 Q. Did you ever consider requiring a</p> <p>3 higher threshold other than having a sale</p> <p>4 above cost for the triggering of the</p> <p>5 condition subsequent?</p> <p>6 A. No.</p> <p>7 Q. Was there any part of your</p> <p>8 brother's proposal that you rejected?</p> <p>9 A. No.</p> <p>10 Q. Was there any part of your</p> <p>11 brother's proposal that Dugaboy rejected?</p> <p>12 A. No.</p> <p>13 Q. Is there any aspect of any of the</p> <p>14 agreements that incorporates a proposal or</p> <p>15 idea that you or Dugaboy made?</p> <p>16 MS. DEITSCH-PEREZ: Object to the</p> <p>17 form.</p> <p>18 A. No.</p> <p>19 Q. Now do you recall that paragraph</p> <p>20 82 also provides that all of the notes</p> <p>21 would be forgiven if any of the portfolio</p> <p>22 companies was sold on a basis out of Jim</p> <p>23 Dondero's control?</p> <p>24 A. Yes.</p> <p>25 Q. Whose idea was it to include that</p>	<p>Page 199</p> <p>1 N. Dondero</p> <p>2 provision in the agreement?</p> <p>3 A. I thought I already stated that.</p> <p>4 That Jim had concerns. That was Jim's</p> <p>5 proposal.</p> <p>6 Q. Okay. Did you or Dugaboy reject</p> <p>7 that proposal?</p> <p>8 A. We did not.</p> <p>9 Q. Did you push back on that</p> <p>10 proposal at all?</p> <p>11 A. No.</p> <p>12 Q. Did either you or Dugaboy make</p> <p>13 any counterproposal to that aspect of the</p> <p>14 agreement?</p> <p>15 A. No.</p> <p>16 Q. Do you understand that James</p> <p>17 Seery is in control of the portfolio</p> <p>18 companies subject to the agreement?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 A. I didn't know that.</p> <p>22 Q. Are you aware that your brother</p> <p>23 no longer controls the portfolio companies</p> <p>24 that were the subject of the agreement?</p> <p>25 A. Yes.</p>
<p>Page 200</p> <p>1 N. Dondero</p> <p>2 Q. So you're aware that somebody</p> <p>3 other than your brother may sell Highland's</p> <p>4 interest in the portfolio companies; is</p> <p>5 that right?</p> <p>6 A. Correct.</p> <p>7 Q. So under the agreements that you</p> <p>8 caused Dugaboy to enter into on behalf of</p> <p>9 Highland, all of the notes that were</p> <p>10 subject to the agreements will be forgiven</p> <p>11 at the moment somebody other than your</p> <p>12 brother sells one of the portfolio</p> <p>13 companies.</p> <p>14 Do I have that right?</p> <p>15 A. I'm sorry, John. Once again?</p> <p>16 Q. Okay. I just want to understand,</p> <p>17 you know, the import of the agreements that</p> <p>18 you've described. So let me try again.</p> <p>19 Under the agreements that you</p> <p>20 caused Dugaboy to enter into on behalf of</p> <p>21 Highland, all of the notes that are subject</p> <p>22 to the agreements will be forgiven the</p> <p>23 moment that any of those three portfolio</p> <p>24 companies are sold.</p> <p>25 Do I have that right?</p>	<p>Page 201</p> <p>1 N. Dondero</p> <p>2 A. Correct, you have that right.</p> <p>3 Q. Why did you agree, as the trustee</p> <p>4 of Dugaboy, that all of the notes subject</p> <p>5 to the agreements would be forgiven if any</p> <p>6 of the subject portfolio companies was sold</p> <p>7 on a basis outside of your brother's</p> <p>8 control?</p> <p>9 A. I agreed to that provision of the</p> <p>10 agreement because – and I believe I stated</p> <p>11 this – Jim had concerns about doing the</p> <p>12 work and the effort and putting the time in</p> <p>13 to build up any one of those three</p> <p>14 portfolio companies and then having</p> <p>15 somebody outside of his control sell it for</p> <p>16 less than a monetized value that would</p> <p>17 allow the notes to be forgiven.</p> <p>18 Q. But there's no component of the</p> <p>19 agreement that will avoid the forgiveness</p> <p>20 of the notes depending on the price at</p> <p>21 which the assets were sold, correct?</p> <p>22 A. John, there's no provision of the</p> <p>23 agreement what?</p> <p>24 Q. If somebody were to sell the</p> <p>25 portfolio assets for a substantial price</p>

<p>Page 202</p> <p>1 N. Dondero</p> <p>2 above cost –</p> <p>3 A. Above cost?</p> <p>4 Q. Above cost.</p> <p>5 – would the notes still be</p> <p>6 forgiven?</p> <p>7 A. Yes, of course.</p> <p>8 Q. And if the portfolio companies</p> <p>9 are sold at a price substantially below</p> <p>10 cost, will the notes still be forgiven?</p> <p>11 A. They will if they're sold by</p> <p>12 somebody that's not my brother, that's not</p> <p>13 Jim.</p> <p>14 Q. Okay.</p> <p>15 A. If somebody comes in or – who</p> <p>16 did you say, that gentleman that now has</p> <p>17 control of them, if he decides to sell them</p> <p>18 below cost, the notes are still forgiven.</p> <p>19 Q. And if he decides to sell them</p> <p>20 above cost, the notes are forgiven, right?</p> <p>21 A. That is correct, but Highland</p> <p>22 would benefit.</p> <p>23 Q. How does Highland benefit because</p> <p>24 some third party sells the assets?</p> <p>25 A. Okay. That's not what I said.</p>	<p>Page 203</p> <p>1 N. Dondero</p> <p>2 But to answer your question, they</p> <p>3 wouldn't – if it got sold for less than</p> <p>4 the value of them, then Highland wouldn't</p> <p>5 benefit. But that wouldn't be in Jim's</p> <p>6 control.</p> <p>7 Q. Did you expect Highland to</p> <p>8 benefit if the portfolio companies were</p> <p>9 sold on a basis outside of Mr. Dondero's</p> <p>10 control?</p> <p>11 A. I have no idea, John.</p> <p>12 Q. Did you have any idea – did you</p> <p>13 or Dugaboy have any idea when you entered</p> <p>14 into the agreement if Highland would</p> <p>15 benefit from the sale of the portfolio</p> <p>16 companies on a basis outside of</p> <p>17 Mr. Dondero's control?</p> <p>18 A. I wouldn't know that.</p> <p>19 Q. Okay. Now if Jim sold one of</p> <p>20 those portfolio companies for a dollar</p> <p>21 above cost, all of the notes would have</p> <p>22 been forgiven, correct?</p> <p>23 A. Correct.</p> <p>24 Q. And did he have the ability to</p> <p>25 sell any of the portfolio companies at the</p>
<p>Page 204</p> <p>1 N. Dondero</p> <p>2 time you entered into the agreements?</p> <p>3 MS. DEITSCH-PEREZ: Object to the</p> <p>4 form.</p> <p>5 MR. MORRIS: Withdrawn.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Did you and Dugaboy understand</p> <p>8 that Mr. Dondero had the ability to sell</p> <p>9 any of the portfolio companies at the time</p> <p>10 you entered into the agreements?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. If your brother –</p> <p>13 A. That was my understanding.</p> <p>14 Q. Okay. And if your brother sold</p> <p>15 one of those portfolio companies for a</p> <p>16 dollar above cost, what benefit would</p> <p>17 Highland receive if the consequence of that</p> <p>18 was the forgiveness of more than \$60</p> <p>19 million in principal amount of promissory</p> <p>20 notes?</p> <p>21 MS. DEITSCH-PEREZ: Object to the</p> <p>22 form.</p> <p>23 A. John?</p> <p>24 Q. Yes?</p> <p>25 A. Oh.</p>	<p>Page 205</p> <p>1 N. Dondero</p> <p>2 Q. You can answer.</p> <p>3 A. That hasn't happened in a</p> <p>4 hypothetical. I don't have an opinion on</p> <p>5 that.</p> <p>6 Q. Well, you entered into the</p> <p>7 agreements, did you not?</p> <p>8 A. I did.</p> <p>9 Q. And you agreed on behalf of</p> <p>10 Dugaboy on behalf of the plaintiff that if</p> <p>11 Jim sold one of the portfolio companies at</p> <p>12 a dollar above cost, all of the notes would</p> <p>13 be forgiven, correct?</p> <p>14 A. I entered into the agreement for</p> <p>15 Dugaboy that if, you're right, any of the</p> <p>16 portfolio companies monetized higher,</p> <p>17 right, the notes would be forgiven. But –</p> <p>18 and I thought about your scenario, but I</p> <p>19 also thought about it could be \$100</p> <p>20 million. We don't know. This is all</p> <p>21 hypothetical.</p> <p>22 Q. It's actually not hypothetical</p> <p>23 because the term of your agreement was that</p> <p>24 he could have sold any of the three</p> <p>25 portfolio companies at a dollar above cost</p>

<p>Page 206</p> <p>1 N. Dondero</p> <p>2 and received in return the forgiveness of</p> <p>3 all of these notes, right?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. As the trustee of Dugaboy</p> <p>6 who entered into the agreement on behalf of</p> <p>7 Highland, what benefit would there be to</p> <p>8 Highland if the portfolio companies were</p> <p>9 sold at any price less than the aggregate</p> <p>10 principal amount of the notes?</p> <p>11 A. Less than?</p> <p>12 Q. Let's say it was sold for \$50</p> <p>13 million above cost, then Highland would</p> <p>14 have had to forgiven more than \$60 million</p> <p>15 of notes, correct?</p> <p>16 A. Correct.</p> <p>17 Q. How would Highland benefit by</p> <p>18 having an asset sold \$50 million above cost</p> <p>19 where the consequence was that they would</p> <p>20 forgive more than \$50 million of money that</p> <p>21 was owed to it?</p> <p>22 A. Well, I looked at it differently,</p> <p>23 John. And I thought it benefitted Highland</p> <p>24 at the time because money didn't come out</p> <p>25 of Highland's balance sheets to increase</p>	<p>Page 207</p> <p>1 N. Dondero</p> <p>2 Jim's salary. They received interest in</p> <p>3 payment on the loans. We don't know when</p> <p>4 and if the trigger is going to come into</p> <p>5 play that the loans would be forgiven.</p> <p>6 Even as we sit here today, 20-plus million</p> <p>7 has been paid on the loan.</p> <p>8 Q. Can you explain why your brother</p> <p>9 is making payments on demand notes after</p> <p>10 entering into the agreements with you?</p> <p>11 A. It's my limited understanding</p> <p>12 that he's made payments when whatever</p> <p>13 entity needs money.</p> <p>14 Q. And what is the basis for that</p> <p>15 understanding?</p> <p>16 A. Common sense. I don't know,</p> <p>17 John.</p> <p>18 THE WITNESS: And I hate to do</p> <p>19 this, but I know when you – can you</p> <p>20 come to a place of a break in the near</p> <p>21 future whenever is convenient in your</p> <p>22 questions there, please?</p> <p>23 MR. MORRIS: Sure.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. What is the basis for saying that</p>
<p>Page 208</p> <p>1 N. Dondero</p> <p>2 your brother paid back loans at times that</p> <p>3 Highland needed the money – withdrawn.</p> <p>4 Is it your testimony that your</p> <p>5 brother made payments against the loans</p> <p>6 after entering into the agreements with you</p> <p>7 because Highland needed the money?</p> <p>8 A. That's my belief, John.</p> <p>9 Q. Okay. And what is the basis for</p> <p>10 that belief?</p> <p>11 A. I don't have one except I know</p> <p>12 how my brother works.</p> <p>13 Q. Do you know that your brother</p> <p>14 caused the borrowers under the promissory</p> <p>15 notes to make payments against those notes</p> <p>16 after entering into the agreements with</p> <p>17 you?</p> <p>18 A. I do not.</p> <p>19 Q. Did you ever ask anybody?</p> <p>20 A. I did not.</p> <p>21 Q. And I think we covered this</p> <p>22 earlier, but I just want to try and cover</p> <p>23 it quickly before we take the break.</p> <p>24 At the time you entered into each</p> <p>25 of the agreements, neither you nor Dugaboy</p>	<p>Page 209</p> <p>1 N. Dondero</p> <p>2 had any understanding of the nature of</p> <p>3 Highland's interest in each of the</p> <p>4 portfolio companies, correct?</p> <p>5 A. That would be correct, yes.</p> <p>6 Q. And at the time the three</p> <p>7 agreements were entered into, neither you</p> <p>8 nor Dugaboy had any understanding as to</p> <p>9 Highland's cost for acquiring its interest</p> <p>10 in each of the three portfolio companies,</p> <p>11 correct?</p> <p>12 A. Yes, that is correct.</p> <p>13 Q. And at the time each of these</p> <p>14 three agreements were entered into, neither</p> <p>15 you nor Dugaboy had any information as to</p> <p>16 the value of Highland's interest in any of</p> <p>17 the portfolio companies, correct?</p> <p>18 MS. DEITSCH-PEREZ: Object to the</p> <p>19 form.</p> <p>20 MR. MORRIS: You can answer.</p> <p>21 A. I'm sorry, John, can you repeat</p> <p>22 the question, please?</p> <p>23 Q. At the time that you entered into</p> <p>24 each of these three agreements, neither you</p> <p>25 nor Dugaboy had any information concerning</p>



<p>Page 210</p> <p>1 N. Dondero</p> <p>2 the value of Highland's interest in the</p> <p>3 three portfolio companies, correct?</p> <p>4 MS. DEITSCH-PEREZ: Object to the</p> <p>5 form.</p> <p>6 A. That's correct, John.</p> <p>7 Q. And at the time that you entered</p> <p>8 into these three agreements, neither you</p> <p>9 nor Dugaboy knew whether the value of</p> <p>10 Highland's interest in the three portfolio</p> <p>11 companies was more or less than the cost of</p> <p>12 acquisition, correct?</p> <p>13 A. That's correct.</p> <p>14 MR. MORRIS: We can take that</p> <p>15 break now if you'd like.</p> <p>16 MR. DRAPER: John, this is</p> <p>17 Douglas.</p> <p>18 How much more do you think you</p> <p>19 have?</p> <p>20 THE VIDEOGRAPHER: The time is</p> <p>21 2:41. We are going off the record.</p> <p>22 (Recess is taken.)</p> <p>23 THE VIDEOGRAPHER: The time is</p> <p>24 2:57. We are back on the record.</p> <p>25 MR. MORRIS: Can we put back up</p>	<p>Page 211</p> <p>1 N. Dondero</p> <p>2 paragraph 82 from Mr. Dondero's answer</p> <p>3 to the Amended Complaint?</p> <p>4 (Document review.)</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. Ms. Dondero, can you hear me?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Do you see in the middle</p> <p>9 of paragraph 82 it talks about the purpose</p> <p>10 of the agreement?</p> <p>11 A. Um-hmm.</p> <p>12 Q. And do you see where it says that</p> <p>13 Jim Dondero, quote, "was otherwise</p> <p>14 underpaid compared to reasonable</p> <p>15 compensation levels in the industry"?</p> <p>16 A. I see that.</p> <p>17 Q. At the time that you caused</p> <p>18 Dugaboy to enter into the three agreements</p> <p>19 on behalf of Highland, did you believe that</p> <p>20 James Dondero was underpaid compared to</p> <p>21 reasonable compensation levels in the</p> <p>22 industry?</p> <p>23 A. Yes, I believed what he told me.</p> <p>24 Q. Okay. Did you have any basis for</p> <p>25 believing that he was underpaid compared to</p>
<p>Page 212</p> <p>1 N. Dondero</p> <p>2 reasonable compensation levels in the</p> <p>3 industry other than what your brother told</p> <p>4 you?</p> <p>5 A. No.</p> <p>6 Q. Okay. Did Dugaboy have any basis</p> <p>7 for believing that your brother was</p> <p>8 underpaid compared to reasonable</p> <p>9 compensation levels in the industry other</p> <p>10 than what your brother said?</p> <p>11 A. Not that I'm aware of.</p> <p>12 Q. Prior to entering into each of</p> <p>13 these three agreements, did you or Dugaboy</p> <p>14 make any effort to ascertain whether your</p> <p>15 brother was underpaid compared to</p> <p>16 reasonable compensation levels in the</p> <p>17 industry?</p> <p>18 A. Not that I remember.</p> <p>19 Q. At the time that you entered into</p> <p>20 these agreements, neither you nor Dugaboy</p> <p>21 knew the total compensation package that</p> <p>22 Mr. Dondero received from Highland in any</p> <p>23 calendar year, correct?</p> <p>24 A. John, can you ask that question</p> <p>25 again, please?</p>	<p>Page 213</p> <p>1 N. Dondero</p> <p>2 Q. Yes. I'd be happy to.</p> <p>3 At the time that you caused</p> <p>4 Dugaboy to enter into each of the three</p> <p>5 agreements that you've described, neither</p> <p>6 you nor Dugaboy made any effort to</p> <p>7 determine your brother was underpaid</p> <p>8 compared to reasonable compensation levels</p> <p>9 in the industry, correct?</p> <p>10 A. That's correct.</p> <p>11 Q. And at the time that you caused</p> <p>12 Dugaboy to enter into the agreements,</p> <p>13 neither you nor Dugaboy knew how much</p> <p>14 compensation your brother received from</p> <p>15 Highland in any particular year, correct?</p> <p>16 MS. DEITSCH-PEREZ: You mean the</p> <p>17 exact number?</p> <p>18 MR. MORRIS: I mean general</p> <p>19 number. Any number.</p> <p>20 A. Okay. I think we spoke about</p> <p>21 this earlier. I had a general number on</p> <p>22 salary.</p> <p>23 Q. Correct.</p> <p>24 And now I'm asking about total</p> <p>25 compensation, including deferred</p>

<p>Page 214</p> <p>1 N. Dondero</p> <p>2 compensation, including any profit sharing,</p> <p>3 including any distributions, total</p> <p>4 compensation, right?</p> <p>5 Do you see that this is referring</p> <p>6 not to salary but to compensation?</p> <p>7 A. I do.</p> <p>8 Q. Okay.</p> <p>9 A. And I would not have known that.</p> <p>10 Q. Okay. So let me ask the question</p> <p>11 again just to make sure it's clear.</p> <p>12 At the time that you caused</p> <p>13 Dugaboy to enter into each of these three</p> <p>14 agreements, neither you nor Dugaboy knew</p> <p>15 what Mr. Dondero's compensation was from</p> <p>16 Highland for any particular year, correct?</p> <p>17 A. Correct.</p> <p>18 Q. And at the time that you caused</p> <p>19 Dugaboy to enter into the three agreements,</p> <p>20 neither you nor Dugaboy ever asked anybody</p> <p>21 what Mr. Dondero's compensation was from</p> <p>22 Highland for any particular year, correct?</p> <p>23 A. Correct.</p> <p>24 Q. And at the time you caused</p> <p>25 Dugaboy to enter into these three</p>	<p>Page 215</p> <p>1 N. Dondero</p> <p>2 agreements, neither you nor Dugaboy made</p> <p>3 any effort to try to ascertain what</p> <p>4 Mr. Dondero's compensation from Highland</p> <p>5 was in any particular year, correct?</p> <p>6 A. That's correct.</p> <p>7 Q. Okay. Did you or Dugaboy ever</p> <p>8 conduct any analysis of what reasonable</p> <p>9 compensation levels in the industry were?</p> <p>10 A. Not that I recall.</p> <p>11 Q. Did Mr. Dondero ever tell you</p> <p>12 what he thought reasonable compensation</p> <p>13 levels were in the industry?</p> <p>14 A. John, I vaguely remember him</p> <p>15 throwing out examples of other people in</p> <p>16 his position and the astronomical money</p> <p>17 that they make. I just don't remember</p> <p>18 their names or the companies.</p> <p>19 Q. Okay. Did you or Dugaboy make</p> <p>20 any effort at any time prior to entering</p> <p>21 into the three agreements to determine what</p> <p>22 reasonable compensation levels were in the</p> <p>23 industry?</p> <p>24 A. No.</p> <p>25 Q. Did you or Dugaboy reach any</p>
<p>Page 216</p> <p>1 N. Dondero</p> <p>2 conclusions prior to entering into the</p> <p>3 agreements as to whether Mr. Dondero was</p> <p>4 underpaid compared to reasonable</p> <p>5 compensation levels in the industry?</p> <p>6 A. The first part of that, John?</p> <p>7 The first part of your question?</p> <p>8 Q. Did you or Dugaboy reach any</p> <p>9 conclusions prior to entering into the</p> <p>10 three agreements as to whether your brother</p> <p>11 in fact was underpaid compared to</p> <p>12 reasonable compensation levels in the</p> <p>13 industry?</p> <p>14 A. Yes, I came to the conclusion</p> <p>15 that he was based on what he told me.</p> <p>16 Q. Okay. And you had no other</p> <p>17 information upon which you relied to reach</p> <p>18 your conclusion that he was underpaid</p> <p>19 except for the information that your</p> <p>20 brother provided to you, correct?</p> <p>21 A. That's correct.</p> <p>22 Q. Okay. And other than -- okay.</p> <p>23 MR. MORRIS: We can take that</p> <p>24 down. Thank you.</p> <p>25 BY MR. MORRIS:</p>	<p>Page 217</p> <p>1 N. Dondero</p> <p>2 Q. Ms. Dondero, do you know if the</p> <p>3 terms of any of the agreements were ever</p> <p>4 reduced to writing?</p> <p>5 A. I didn't put them in writing.</p> <p>6 That's all I can speak to.</p> <p>7 Q. Have you ever seen the terms of</p> <p>8 any of the agreements in writing?</p> <p>9 A. I have not.</p> <p>10 Q. Did anyone ever tell you that the</p> <p>11 terms of the agreements were written down</p> <p>12 anywhere?</p> <p>13 A. Not that I recall.</p> <p>14 Q. Did you or Dugaboy ever ask</p> <p>15 anyone if the terms of the agreements were</p> <p>16 written down anywhere?</p> <p>17 A. Not that I remember.</p> <p>18 Q. Did you believe that these</p> <p>19 agreements were important at the time that</p> <p>20 you caused Dugaboy to enter into them?</p> <p>21 A. Yes.</p> <p>22 Q. Why did you think that these</p> <p>23 agreements were important?</p> <p>24 A. I think I thought they were</p> <p>25 important because they gave Highland the</p>

<p>Page 218</p> <p>1 N. Dondero</p> <p>2 chance to motivate and get Jim – or give</p> <p>3 Jim an extra incentive to make the</p> <p>4 portfolio companies into something really</p> <p>5 magnanimous, which would have been great</p> <p>6 for Highland and Jim.</p> <p>7 Q. When you entered into the</p> <p>8 agreements, did you intend that they would</p> <p>9 be binding on Highland?</p> <p>10 A. That was my belief, yes.</p> <p>11 Q. Did it ever occur to you that you</p> <p>12 might want to write down the terms of these</p> <p>13 important agreements?</p> <p>14 A. Honestly, it didn't come to mind,</p> <p>15 no.</p> <p>16 Q. Did you ever tell anybody in the</p> <p>17 world prior to the petition date that you</p> <p>18 had entered into these three agreements</p> <p>19 with your brother?</p> <p>20 A. Besides Melissa, who knew, I</p> <p>21 don't remember anyone else offhand that I</p> <p>22 would have discussed them with.</p> <p>23 Q. How did Melissa know?</p> <p>24 A. Pardon?</p> <p>25 Q. Are you referring to Melissa</p>	<p>Page 219</p> <p>1 N. Dondero</p> <p>2 Schroth?</p> <p>3 A. Correct.</p> <p>4 Q. Why do you think that she knew?</p> <p>5 A. I have a vague memory of</p> <p>6 discussing it with her.</p> <p>7 Q. What do you remember about that</p> <p>8 vague memory?</p> <p>9 A. It was in regards to Dugaboy.</p> <p>10 She is one of my main contact people, and I</p> <p>11 think it was more a recap conversation.</p> <p>12 Q. And what did she say?</p> <p>13 A. She just listened, made a note, I</p> <p>14 assume, made a mental note.</p> <p>15 Q. Do you recall, did this occur in</p> <p>16 a telephone conversation?</p> <p>17 A. Yes, I believe it did.</p> <p>18 Q. Okay. Do you recall when that</p> <p>19 conversation took place?</p> <p>20 A. I do not.</p> <p>21 Q. Do you recall if it was before or</p> <p>22 after the petition date?</p> <p>23 A. I do not.</p> <p>24 Q. Did she ask any questions?</p> <p>25 A. Not that I recall.</p>
<p>Page 220</p> <p>1 N. Dondero</p> <p>2 Q. Did you tell her which notes were</p> <p>3 the subject of the agreements?</p> <p>4 A. The conversation was not that</p> <p>5 detailed.</p> <p>6 Q. Well, if she didn't ask any</p> <p>7 questions and she didn't say anything that</p> <p>8 you recall in response, can you recall</p> <p>9 everything you said to Ms. Schroth during</p> <p>10 this conversation?</p> <p>11 A. I don't remember, John, the</p> <p>12 specifics.</p> <p>13 Q. Do you remember anything about</p> <p>14 the conversation at all?</p> <p>15 A. I just remember them coming up in</p> <p>16 conversation.</p> <p>17 Q. You remember what coming up?</p> <p>18 A. The forgiveness of the loan.</p> <p>19 Q. Did she indicate to you that she</p> <p>20 knew about it already?</p> <p>21 A. I don't remember.</p> <p>22 Q. Did she express any surprise at</p> <p>23 what you told her?</p> <p>24 A. No, but I do remember her saying</p> <p>25 it was the great motivator.</p>	<p>Page 221</p> <p>1 N. Dondero</p> <p>2 Q. And you don't think your brother</p> <p>3 was otherwise motivated to sell one of</p> <p>4 three assets at a dollar above cost,</p> <p>5 correct?</p> <p>6 A. I never said –</p> <p>7 MS. DEITSCH-PEREZ: Object to the</p> <p>8 form.</p> <p>9 A. I didn't say that.</p> <p>10 Q. Well, but that's what the</p> <p>11 agreement permitted, correct, that the</p> <p>12 notes would be forgiven if he sold an asset</p> <p>13 at a dollar above cost, right?</p> <p>14 MS. DEITSCH-PEREZ: Object to the</p> <p>15 form.</p> <p>16 A. John, at the time I entered into</p> <p>17 the agreement, I believe that they would be</p> <p>18 a motivator, an increased motivator.</p> <p>19 You met my brother, right? You</p> <p>20 know he's motivated.</p> <p>21 Q. It never would have occurred to</p> <p>22 me that he needed more motivation, but</p> <p>23 maybe that's just my view.</p> <p>24 A. It's increased motivation when</p> <p>25 there's money on the line.</p>

<p>Page 222</p> <p>1 N. Dondero</p> <p>2 Q. But how does it motivate him when</p> <p>3 he can recover the benefits of the</p> <p>4 agreement regardless of how much above cost</p> <p>5 the asset is sold?</p> <p>6 A. Okay. I'm sorry, John, one more</p> <p>7 time, please, the question?</p> <p>8 Q. How does it motivate him when he</p> <p>9 will reap the benefits of the agreement if</p> <p>10 he sells – withdrawn.</p> <p>11 How does he get motivated under</p> <p>12 an agreement whereby he will get the</p> <p>13 benefit of the forgiveness of over \$60</p> <p>14 million of notes without regard to how much</p> <p>15 above cost he sells one of three assets?</p> <p>16 A. Okay. John, when I entered into</p> <p>17 these, he was still at the helm of</p> <p>18 Highland.</p> <p>19 Q. Correct.</p> <p>20 A. So if he would have monetized</p> <p>21 them at a really high value, he would have</p> <p>22 benefitted from his interest, beneficial</p> <p>23 interest in Highland.</p> <p>24 Q. Under the terms of the agreement,</p> <p>25 are you able to identify how Mr. Dondero</p>	<p>Page 223</p> <p>1 N. Dondero</p> <p>2 would have been motivated whether –</p> <p>3 withdrawn.</p> <p>4 It doesn't matter under the</p> <p>5 agreements that you entered into on behalf</p> <p>6 of Dugaboy how much above cost the assets</p> <p>7 are sold before Mr. Dondero could reap the</p> <p>8 benefits of the agreement, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And you could have, but you</p> <p>11 didn't, demand that the notes would be</p> <p>12 forgiven only if he sold the assets at –</p> <p>13 I'm just going to pick a number – 50</p> <p>14 percent more than cost, right?</p> <p>15 A. Anything is possible.</p> <p>16 Q. But you didn't – anything is</p> <p>17 possible, but the fact is that neither you</p> <p>18 nor Dugaboy made any proposal that would</p> <p>19 tie the benefits that Mr. Dondero wanted to</p> <p>20 the amount of gain that was to be recovered</p> <p>21 on behalf of Highland, correct?</p> <p>22 A. Correct. I didn't look at it the</p> <p>23 way you are, correct.</p> <p>24 Q. And so when you speak of</p> <p>25 motivation under the terms of the agreement</p>
<p>Page 224</p> <p>1 N. Dondero</p> <p>2 that you entered into on behalf of</p> <p>3 Highland, Mr. Dondero would be indifferent</p> <p>4 whether the asset was sold at 1 percent</p> <p>5 above cost, at 10 percent above cost, more</p> <p>6 than the face amount of the promissory</p> <p>7 note, right? There's no relationship</p> <p>8 between the gain to Highland and the</p> <p>9 benefit to Mr. Dondero, correct?</p> <p>10 A. You mean now when he's not at the</p> <p>11 helm of Highland, John?</p> <p>12 Q. No, I mean – no. Let me try</p> <p>13 again.</p> <p>14 At the moment you entered into</p> <p>15 the agreement –</p> <p>16 A. Right.</p> <p>17 Q. – if a subsequent event</p> <p>18 occurred, you and your brother knew that he</p> <p>19 would receive more than \$6 million in value</p> <p>20 through the forgiveness of the notes,</p> <p>21 correct?</p> <p>22 A. Correct.</p> <p>23 Q. But at the time that you entered</p> <p>24 into the agreements, neither you nor your</p> <p>25 brother knew what the economic benefit to</p>	<p>Page 225</p> <p>1 N. Dondero</p> <p>2 Highland would be because the asset hadn't</p> <p>3 been sold yet, correct?</p> <p>4 A. Correct.</p> <p>5 Q. And it wasn't in the hands of a</p> <p>6 third party, correct?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. And I think you may have</p> <p>9 testified to this earlier. If you did, I</p> <p>10 apologize. But do you know the aggregate</p> <p>11 amount that's due under each of the notes</p> <p>12 that are subject to the agreements that you</p> <p>13 entered into on behalf of Dugaboy?</p> <p>14 A. As of today's value or –</p> <p>15 Q. Let's start with today's value.</p> <p>16 A. Okay. The amount owed I believe</p> <p>17 per the lawsuit for all of them is just</p> <p>18 north of 50 million.</p> <p>19 Q. And were you aware at the time</p> <p>20 you entered into the agreements, the</p> <p>21 aggregate principal amount that was still</p> <p>22 due on the notes that were subject to the</p> <p>23 agreement?</p> <p>24 A. When I entered into the three</p> <p>25 agreements?</p>

<p>Page 226</p> <p>1 N. Dondero</p> <p>2 Q. Yes.</p> <p>3 A. The total for '17, '18, and '19</p> <p>4 combined was in the ballpark of 72 million,</p> <p>5 I believe.</p> <p>6 Q. And the difference between the</p> <p>7 principal amount that was due at the time</p> <p>8 that you entered into the agreements and</p> <p>9 the principal amount that's due today is</p> <p>10 the payments that were made in the</p> <p>11 intervening period.</p> <p>12 Do I have that right?</p> <p>13 A. I'm assuming payments and</p> <p>14 interest, sir, yes.</p> <p>15 Q. Okay. If the assets are sold</p> <p>16 now, what benefit will Highland receive</p> <p>17 relative to the forgiveness of the notes?</p> <p>18 MS. DEITSCH-PEREZ: Object to the</p> <p>19 form.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. The assets are now in the hands</p> <p>22 of a third party, right?</p> <p>23 A. Um-hmm. Correct.</p> <p>24 Q. Okay. And is it your</p> <p>25 understanding that if a third party sells</p>	<p>Page 227</p> <p>1 N. Dondero</p> <p>2 the assets that irrespective of the price</p> <p>3 at which it sold, the moment it's sold, the</p> <p>4 notes will be forgiven?</p> <p>5 A. That is my understanding.</p> <p>6 Q. So that if a third party were to</p> <p>7 sell the asset – withdrawn.</p> <p>8 So at the time that you entered</p> <p>9 into the agreements on behalf of Dugaboy,</p> <p>10 neither you nor Dugaboy had any</p> <p>11 understanding of what Highland's economic</p> <p>12 recovery would be if a third party sold any</p> <p>13 of the portfolio companies, correct?</p> <p>14 A. I wouldn't have known the future.</p> <p>15 That is correct.</p> <p>16 Q. Did you and Dugaboy – withdrawn.</p> <p>17 Did you and Dugaboy believe at</p> <p>18 the time that you entered into the</p> <p>19 agreements that Highland received</p> <p>20 reasonably equivalent value in exchange for</p> <p>21 the agreements?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form.</p> <p>24 A. John, I repeat, I thought at the</p> <p>25 time I entered into the agreement, there</p>
<p>Page 228</p> <p>1 N. Dondero</p> <p>2 was a – that it was a good deal for both</p> <p>3 Jim and Highland, a win-win situation. I</p> <p>4 think we discussed this already.</p> <p>5 Q. Okay. But you didn't know the</p> <p>6 price at which Mr. Dondero would sell the</p> <p>7 asset that was subject to the condition</p> <p>8 subsequent, correct?</p> <p>9 A. John, correct, but I know my</p> <p>10 brother, and he's a financial guru, and I</p> <p>11 trusted in the fact that he would make them</p> <p>12 into something great.</p> <p>13 Q. Okay. But neither you nor</p> <p>14 Dugaboy could predict whether Highland</p> <p>15 would receive from the sale of the assets</p> <p>16 more or less than the principal and</p> <p>17 interest due under the notes, correct?</p> <p>18 A. You are correct; I could not</p> <p>19 predict what would happen.</p> <p>20 Q. Okay. Did Mr. Dondero express</p> <p>21 any reason to you why he thought the notes</p> <p>22 should be forgiven if the assets were sold</p> <p>23 by somebody other than himself?</p> <p>24 A. Okay. I'm sorry, John. Again?</p> <p>25 Q. Did Mr. Dondero give you any</p>	<p>Page 229</p> <p>1 N. Dondero</p> <p>2 reason as to why he believed he was</p> <p>3 entitled to the forgiveness of the notes</p> <p>4 simply because the assets were sold by</p> <p>5 somebody other than himself?</p> <p>6 A. I believe we touched on this</p> <p>7 already, but I will repeat it.</p> <p>8 His concern was that he put the</p> <p>9 time and effort and energy into the three</p> <p>10 portfolio companies and then some element</p> <p>11 beyond his control could come in and sell</p> <p>12 them at a loss after he had done all the</p> <p>13 work. And if we didn't have that provision</p> <p>14 in, his notes wouldn't be forgiven.</p> <p>15 Q. Did you ask him why he was</p> <p>16 concerned that some element beyond his</p> <p>17 control were to intervene to prevent him</p> <p>18 from selling the assets?</p> <p>19 A. I did not.</p> <p>20 Q. Did you ask him why that was even</p> <p>21 a possibility at the time that you entered</p> <p>22 into these three agreements?</p> <p>23 A. I did not. But knowing my</p> <p>24 brother, he looks at all sides of every</p> <p>25 situation.</p>



<p>Page 230</p> <p>1 N. Dondero</p> <p>2 Q. Okay. The notes that were issued</p> <p>3 by HCMS, HCRE, and NexPoint, can we refer</p> <p>4 to those for the next set of questions as</p> <p>5 the corporate notes?</p> <p>6 A. Okay.</p> <p>7 MS. DEITSCH-PEREZ: Can you read</p> <p>8 that back?</p> <p>9 MR. MORRIS: Sure.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. Can we call the notes that were</p> <p>12 executed on behalf of HCMS, HCRE, and</p> <p>13 NexPoint as the corporate notes?</p> <p>14 MS. DEITSCH-PEREZ: You're</p> <p>15 including HCMFA in this?</p> <p>16 MR. MORRIS: No, I never said</p> <p>17 that.</p> <p>18 MS. DEITSCH-PEREZ: I thought you</p> <p>19 did. That's why I said -- I think you</p> <p>20 misspoke, but can you ask the question</p> <p>21 again.</p> <p>22 MR. MORRIS: I don't think so. I</p> <p>23 don't think so, but I'll say it for a</p> <p>24 third time.</p> <p>25 BY MR. MORRIS:</p>	<p>Page 231</p> <p>1 N. Dondero</p> <p>2 Q. Can we call the notes executed on</p> <p>3 behalf of HCMS, HCRE, and NexPoint as the</p> <p>4 corporate notes?</p> <p>5 MS. DEITSCH-PEREZ: Okay. Thank</p> <p>6 you. I think I was hearing S as F.</p> <p>7 Sorry.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. Is that okay, Ms. Dondero?</p> <p>10 A. Yes, that's fine. Thank you.</p> <p>11 Q. Okay. And under the agreements,</p> <p>12 were the corporate notes to be forgiven as</p> <p>13 compensation to your brother or as</p> <p>14 compensation to the corporate obligors, the</p> <p>15 corporate borrowers?</p> <p>16 A. Deferred compensation for Jim.</p> <p>17 Q. So let me get this right.</p> <p>18 HCMS, HCRE, and NexPoint each</p> <p>19 borrow money from Highland and give</p> <p>20 Highland promissory notes in return.</p> <p>21 Do I have that right?</p> <p>22 A. I'm sorry, John. Just one more</p> <p>23 time, the question, please?</p> <p>24 Q. Each of HCMS, HCRE, and NexPoint</p> <p>25 borrowed money from Highland and gave</p>
<p>Page 232</p> <p>1 N. Dondero</p> <p>2 promissory notes in return, correct?</p> <p>3 A. Yes. That's my understanding.</p> <p>4 Q. And under the agreement that you</p> <p>5 entered into on behalf of Dugaboy, those</p> <p>6 corporate notes would be forgiven as</p> <p>7 compensation to your brother upon the</p> <p>8 condition -- upon the fulfillment of</p> <p>9 conditions subsequent, correct?</p> <p>10 A. That is correct.</p> <p>11 Q. So that the forgiveness of the</p> <p>12 corporate notes was, in your mind, the same</p> <p>13 thing as giving compensation to your</p> <p>14 brother, correct?</p> <p>15 MS. DEITSCH-PEREZ: Object to the</p> <p>16 form.</p> <p>17 A. They would be considered deferred</p> <p>18 compensation.</p> <p>19 Q. And they would be considered</p> <p>20 compensation to your brother, not</p> <p>21 compensation to the borrowers under each of</p> <p>22 the corporate notes, correct?</p> <p>23 A. That's how I understood it, yes.</p> <p>24 Q. Okay. So in your mind, when you</p> <p>25 entered into these agreements, it didn't</p>	<p>Page 233</p> <p>1 N. Dondero</p> <p>2 matter whether the notes were executed by</p> <p>3 your brother or any of these three</p> <p>4 corporate obligors; the cancellation of the</p> <p>5 notes would be a direct benefit for</p> <p>6 compensation purposes only to your brother,</p> <p>7 correct?</p> <p>8 MS. DEITSCH-PEREZ: Object to the</p> <p>9 form.</p> <p>10 THE WITNESS: Do I still answer?</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Yes.</p> <p>13 A. Yes, John, that's how I</p> <p>14 understood it.</p> <p>15 Q. Thank you.</p> <p>16 A. Certainly.</p> <p>17 Q. Now the compensation that was the</p> <p>18 subject of these agreements, that wasn't to</p> <p>19 compensate him for past services, was it?</p> <p>20 MS. DEITSCH-PEREZ: Object to the</p> <p>21 form.</p> <p>22 MR. MORRIS: Withdrawn.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. The compensation that was subject</p> <p>25 to the agreement was for services that</p>

<p>Page 234</p> <p>1 N. Dondero</p> <p>2 would be rendered in the future, correct?</p> <p>3 MS. DEITSCH-PEREZ: Object to the</p> <p>4 form.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. You can answer.</p> <p>7 A. Well, in the future from what</p> <p>8 date?</p> <p>9 Q. From the date that the agreements</p> <p>10 were entered into.</p> <p>11 A. Correct. Yes. From the date,</p> <p>12 yes.</p> <p>13 Q. The agreement was that the notes</p> <p>14 would be forgiven based on a condition</p> <p>15 subsequent, right?</p> <p>16 A. Yes. So a future date from when</p> <p>17 we entered them, um-hmm.</p> <p>18 Q. So something had to happen in the</p> <p>19 future in order for your brother to get the</p> <p>20 benefit of the bargain, right?</p> <p>21 A. Correct.</p> <p>22 Q. Because if it was compensation</p> <p>23 for services rendered in the past, you just</p> <p>24 give him the money, right?</p> <p>25 A. So true.</p>	<p>Page 235</p> <p>1 N. Dondero</p> <p>2 MS. DEITSCH-PEREZ: Object to the</p> <p>3 form.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. Let me ask another question, a</p> <p>6 different question, Ms. Dondero, and just</p> <p>7 try to finish this up.</p> <p>8 Pursuant to the agreement that</p> <p>9 you entered into on behalf of Dugaboy, the</p> <p>10 notes would only be forgiven if some future</p> <p>11 event occurred, correct?</p> <p>12 A. Right, the monetization of one of</p> <p>13 the three portfolio companies, correct.</p> <p>14 Um-hmm.</p> <p>15 Q. The forgiveness of the notes was</p> <p>16 not for services rendered in the past,</p> <p>17 correct?</p> <p>18 MS. DEITSCH-PEREZ: Object to the</p> <p>19 form.</p> <p>20 A. That is correct.</p> <p>21 Q. Okay. Do you know if Dugaboy</p> <p>22 ever issued any promissory notes in favor</p> <p>23 of Highland?</p> <p>24 A. I know there are loans between</p> <p>25 Dugaboy and Highland.</p>
<p>Page 236</p> <p>1 N. Dondero</p> <p>2 Q. And do you know who made the loan</p> <p>3 and who received the loan or loans?</p> <p>4 A. I believe Dugaboy was the</p> <p>5 borrower. The loan with Highland, it was</p> <p>6 in 2017. And if my memory serves me right,</p> <p>7 it was 23, 24 million.</p> <p>8 Again, going by memory, John,</p> <p>9 because I really wasn't prepared for this</p> <p>10 line of questioning, but I believe there is</p> <p>11 an earlier loan between the two of them.</p> <p>12 Q. And did you – I apologize. I</p> <p>13 didn't mean to step on your words.</p> <p>14 Are you finished?</p> <p>15 A. Oh, no. I am. Thank you.</p> <p>16 Q. Okay. Were you the trustee of</p> <p>17 the Dugaboy Trust at the time the loans you</p> <p>18 just described were obtained from Highland?</p> <p>19 A. The one that I mentioned that I</p> <p>20 remembered the – I believe it's close to</p> <p>21 or around 24 million, in May of '17, I was</p> <p>22 obviously. I became trustee in October of</p> <p>23 '15.</p> <p>24 The other one, I'm not positive</p> <p>25 on, John, the date and the amount. I just</p>	<p>Page 237</p> <p>1 N. Dondero</p> <p>2 know of another one.</p> <p>3 Q. Now the Dugaboy trust is, I think</p> <p>4 as you've described it, a trust for</p> <p>5 education and health and lifestyle</p> <p>6 purposes, right?</p> <p>7 A. And maintenance, correct.</p> <p>8 Q. Do you know why Dugaboy needed to</p> <p>9 borrow 23 to 24 million dollars from</p> <p>10 Highland in 2017?</p> <p>11 A. I'd be speculating. I don't know</p> <p>12 for sure, but I believe it was for real</p> <p>13 estate.</p> <p>14 Q. And did you – do you recall</p> <p>15 executing any documents on behalf of</p> <p>16 Dugaboy in connection with the loan that it</p> <p>17 obtained from Highland?</p> <p>18 A. Not that I recall, John, right</p> <p>19 now.</p> <p>20 Q. Do you know who authorized</p> <p>21 Highland – withdrawn.</p> <p>22 Did you ever have any</p> <p>23 conversations with anybody at any time</p> <p>24 concerning Dugaboy's 23 to 24 million</p> <p>25 dollar loan that it obtained from Highland</p>

<p>Page 238</p> <p>1 N. Dondero</p> <p>2 in around 2017?</p> <p>3 MS. DEITSCH-PEREZ: I'm going to</p> <p>4 object. This is neither one of the</p> <p>5 Dugaboy topics and it's beyond the --</p> <p>6 it doesn't pertain to the four</p> <p>7 adversary proceedings. So it's not</p> <p>8 fair to ask the witness about things</p> <p>9 she's not had the occasion to refresh</p> <p>10 herself on.</p> <p>11 MR. MORRIS: Okay.</p> <p>12 MR. DRAPER: John, I let this go</p> <p>13 on behalf of Dugaboy a little bit just</p> <p>14 for background information, but now</p> <p>15 we're sort of bordering on specifics of</p> <p>16 a transaction that is --</p> <p>17 MR. MORRIS: I am -- go ahead,</p> <p>18 Douglas. I'm sorry.</p> <p>19 MR. DRAPER: -- that is not in</p> <p>20 dispute in this litigation. It is not</p> <p>21 within your 30(b)(6) designation. And</p> <p>22 so it's fundamentally unfair to put</p> <p>23 this witness through a memory test for</p> <p>24 no purpose whatsoever that serves</p> <p>25 nothing to do with this litigation.</p>	<p>Page 239</p> <p>1 N. Dondero</p> <p>2 MR. MORRIS: Okay. Number one, I</p> <p>3 agree that it's not a 30(b)(6) topic.</p> <p>4 Number two, I agree that I'm not</p> <p>5 asking her these questions in her</p> <p>6 capacity as the Dugaboy trustee. I'm</p> <p>7 asking them in her individual capacity.</p> <p>8 So I don't think you have any grounds</p> <p>9 to object any longer, Mr. Draper.</p> <p>10 And number three, I think all of</p> <p>11 this goes to credibility. And it goes</p> <p>12 to everything we've been talking about</p> <p>13 today.</p> <p>14 And so I'm going to continue to</p> <p>15 ask my questions. And if at any time</p> <p>16 you want to direct the witness not to</p> <p>17 answer, you know, we'll deal with it.</p> <p>18 Okay?</p> <p>19 MR. DRAPER: Okay. So if I</p> <p>20 understand what you just said, just so</p> <p>21 the record is clear, this is not</p> <p>22 30(b)(6) questions to the witness. In</p> <p>23 fact, these are questions to the</p> <p>24 witness in her individual capacity and</p> <p>25 will not serve as a 30(b)(6) answer on</p>
<p>Page 240</p> <p>1 N. Dondero</p> <p>2 batch of Dugaboy, correct?</p> <p>3 MR. MORRIS: I thought I was</p> <p>4 quite clear, but, yes, Douglas, that is</p> <p>5 correct.</p> <p>6 MR. DRAPER: Great. Thank you.</p> <p>7 MR. MORRIS: Yep.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. Okay. So Ms. Dondero, do you</p> <p>10 recall any conversations you ever had at</p> <p>11 any time concerning the 23 or 24 million</p> <p>12 dollars that Dugaboy borrowed from</p> <p>13 Highland?</p> <p>14 A. Not at this time.</p> <p>15 Q. Okay. You mentioned that you</p> <p>16 believed that the money was used for the</p> <p>17 acquisition of real estate.</p> <p>18 Do I have that right?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 A. Yes.</p> <p>22 Q. And was that for the acquisition</p> <p>23 of Jim's house in Colorado?</p> <p>24 A. I don't know.</p> <p>25 Q. Do you know if your brother</p>	<p>Page 241</p> <p>1 N. Dondero</p> <p>2 acquired a house in Colorado in or around</p> <p>3 2017?</p> <p>4 A. I know he acquired a house in</p> <p>5 Colorado. The time frame, I'm not certain</p> <p>6 of.</p> <p>7 Q. Do you know that he paid more</p> <p>8 than \$20 million for a house in Colorado?</p> <p>9 A. No.</p> <p>10 Q. Was the loan that Dugaboy</p> <p>11 obtained from Highland subject to any of</p> <p>12 the three agreements that you entered into</p> <p>13 as the trustee of Dugaboy?</p> <p>14 A. Any of the three agreements we've</p> <p>15 been discussing?</p> <p>16 Q. Yes.</p> <p>17 A. No.</p> <p>18 Q. Did you ever ask Jim why the</p> <p>19 Dugaboy note wasn't included in the</p> <p>20 agreements?</p> <p>21 A. I did not.</p> <p>22 Q. But you knew Dugaboy note existed</p> <p>23 at the time you entered into the</p> <p>24 agreements, correct?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>

<p>Page 242</p> <p>1 N. Dondero</p> <p>2 form.</p> <p>3 A. At the time I entered into the</p> <p>4 agreements, I don't know, John.</p> <p>5 Q. So at the time you entered into</p> <p>6 these three agreements, you don't recall</p> <p>7 whether you knew that Dugaboy had obtained</p> <p>8 a 23 to 24 million dollar loan from</p> <p>9 Highland.</p> <p>10 Do I have that right?</p> <p>11 A. I don't know as I sit here now.</p> <p>12 What I knew then, I don't remember.</p> <p>13 Q. But you do remember the specific</p> <p>14 identity of each promissory note that was</p> <p>15 the subject of each of these three</p> <p>16 agreements, correct?</p> <p>17 A. When I refreshed my memory, sure.</p> <p>18 Q. Do you know if Dugaboy ever</p> <p>19 entered into any agreement on behalf of</p> <p>20 Highland other than the three oral</p> <p>21 agreements that you described today?</p> <p>22 A. Dugaboy has entered into a lot of</p> <p>23 agreements with Highland.</p> <p>24 Q. All right. Let me restate the</p> <p>25 question.</p>	<p>Page 243</p> <p>1 N. Dondero</p> <p>2 Did Dugaboy ever, ever – ever,</p> <p>3 ever. Let me try again.</p> <p>4 Did Dugaboy ever enter into any</p> <p>5 agreements pursuant to Section 3.10 of the</p> <p>6 LP agreement other than the three</p> <p>7 agreements that you've mentioned today?</p> <p>8 A. Oh –</p> <p>9 MS. DEITSCH-PEREZ: Were there</p> <p>10 any before these, John? Before?</p> <p>11 MR. MORRIS: I don't care if it's</p> <p>12 before or after. So let me ask again.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. As the trustee of Dugaboy, are</p> <p>15 you aware of any agreement Dugaboy has ever</p> <p>16 entered into pursuant to Section 3.10 of</p> <p>17 the LP agreement other than the three</p> <p>18 agreements that you have described today?</p> <p>19 A. Not that I'm aware of,</p> <p>20 compensation.</p> <p>21 Q. Can we put up your discovery</p> <p>22 responses, which I think is document No. 25</p> <p>23 in your pile.</p> <p>24 MS. DEITSCH-PEREZ: The notebook.</p> <p>25 MR. ELMS: 25.</p>
<p>Page 244</p> <p>1 N. Dondero</p> <p>2 THE WITNESS: What is it?</p> <p>3 MR. ELMS: Tab 25.</p> <p>4 THE WITNESS: Tab 25. Okay.</p> <p>5 (Document review.)</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Have you seen this document</p> <p>8 before, ma'am?</p> <p>9 A. Just one second. I'm getting</p> <p>10 there.</p> <p>11 Q. Sure. Take your time.</p> <p>12 A. Okay.</p> <p>13 (Document review.)</p> <p>14 A. Yes. Yes, I believe I have.</p> <p>15 Q. Can you turn to page 15?</p> <p>16 (Witness complies.)</p> <p>17 Q. Is that your signature?</p> <p>18 A. It is.</p> <p>19 Q. And did you review this document</p> <p>20 before you signed it?</p> <p>21 A. I did.</p> <p>22 Q. Did you have an opportunity to</p> <p>23 consult with counsel before you signed it?</p> <p>24 A. I did.</p> <p>25 Q. Did you in fact consult with</p>	<p>Page 245</p> <p>1 N. Dondero</p> <p>2 counsel before signing it?</p> <p>3 A. I did.</p> <p>4 Q. And you reviewed this document in</p> <p>5 connection with your preparation for</p> <p>6 today's deposition, correct?</p> <p>7 A. Correct.</p> <p>8 Q. As you sit here now, do you know</p> <p>9 of anything in the objections and responses</p> <p>10 that is wrong or inaccurate?</p> <p>11 (Document review.)</p> <p>12 A. I don't see anything, John. I</p> <p>13 don't believe so.</p> <p>14 Q. As you sit here right now, do you</p> <p>15 have any reason to amend these objections</p> <p>16 and responses to make them more complete or</p> <p>17 more precise?</p> <p>18 A. Not at this time.</p> <p>19 Q. Can you turn to page 9, please?</p> <p>20 (Witness complies.)</p> <p>21 Q. Do you see in request for</p> <p>22 admissions No. 7 and 8, you were asked to</p> <p>23 admit, and I'm going to summarize, that no</p> <p>24 document was created prior to the</p> <p>25 commencement of the adversary proceeding</p>

<p>Page 246</p> <p>1 N. Dondero</p> <p>2 that reflects -- let's just take them one</p> <p>3 at a time. Let me withdraw that.</p> <p>4 Looking at No. 7, do you see that</p> <p>5 you denied having sufficient knowledge or</p> <p>6 information to admit or deny the request?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Would you agree that as</p> <p>9 you sit here right now, you are not aware</p> <p>10 of any document that was created prior to</p> <p>11 the commencement of the adversary</p> <p>12 proceeding that reflects or memorializes</p> <p>13 the terms of the agreement?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And turning to No. 8, do</p> <p>16 you see for that one, you also responded by</p> <p>17 saying you lack sufficient information to</p> <p>18 admit or deny the request?</p> <p>19 A. Yes, I do.</p> <p>20 Q. Would you agree with me that it</p> <p>21 would be fair to say that as you sit here</p> <p>22 today, you are not aware of any document</p> <p>23 that was created prior to the commencement</p> <p>24 of the adversary proceeding concerning the</p> <p>25 existence of the agreement?</p>	<p>Page 247</p> <p>1 N. Dondero</p> <p>2 A. That's correct; I'm not aware of</p> <p>3 any.</p> <p>4 Q. Okay. Can we go to Interrogatory</p> <p>5 No. 5?</p> <p>6 MS. DEITSCH-PEREZ: So page 12 to</p> <p>7 13. No, no, where you were. We were</p> <p>8 in Tab 25.</p> <p>9 THE WITNESS: Tab 25. What page</p> <p>10 now?</p> <p>11 MR. ELMS: Page 13.</p> <p>12 MS. DEITSCH-PEREZ: Page 13. The</p> <p>13 number is on page 12, but then --</p> <p>14 MR. ELMS: He's asking you at the</p> <p>15 very top there.</p> <p>16 THE WITNESS: Oh.</p> <p>17 (Document review.)</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. And do you see that Interrogatory</p> <p>20 No. 5 asked you to identify every document</p> <p>21 and communication you reviewed in</p> <p>22 connection with your decision to enter into</p> <p>23 the agreement?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And you said that you</p>
<p>Page 248</p> <p>1 N. Dondero</p> <p>2 either reviewed or discussed with your</p> <p>3 brother the LP agreement and the Dugaboy</p> <p>4 Trust documents.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Do you have any recollection of</p> <p>8 actually reviewing the LP agreement before</p> <p>9 entering into any of the agreements that</p> <p>10 you've described?</p> <p>11 A. I don't recall.</p> <p>12 Q. You may or you may not, but do</p> <p>13 you have a recollection of discussing it</p> <p>14 with your brother?</p> <p>15 A. I don't recall, John.</p> <p>16 Q. Do you recall reviewing Section</p> <p>17 3.1 before you entered into any of the</p> <p>18 three agreements?</p> <p>19 A. I don't know when that review</p> <p>20 took place.</p> <p>21 Q. Do you recall whether the review</p> <p>22 took place in connection with your entry on</p> <p>23 behalf of Dugaboy into any of the three</p> <p>24 agreements?</p> <p>25 A. I don't know the time frame,</p>	<p>Page 249</p> <p>1 N. Dondero</p> <p>2 John.</p> <p>3 Q. Did you confer with anybody --</p> <p>4 withdrawn.</p> <p>5 Did you or Dugaboy confer with</p> <p>6 anybody other than your brother before you</p> <p>7 caused Dugaboy to enter into the three</p> <p>8 agreements?</p> <p>9 A. No, not that I'm aware of.</p> <p>10 Q. Did you or Dugaboy seek any legal</p> <p>11 advice before entering into any of the</p> <p>12 three agreements?</p> <p>13 A. No.</p> <p>14 Q. Do you have any recollection of</p> <p>15 actually reviewing the Dugaboy Trust</p> <p>16 documents before entering into any of the</p> <p>17 three agreements?</p> <p>18 A. I have reviewed the trust</p> <p>19 documents, John. I don't know what time</p> <p>20 frame.</p> <p>21 Q. Okay. I appreciate that.</p> <p>22 A. Sure.</p> <p>23 Q. I'm sorry, did I cut you off?</p> <p>24 A. Oh, no. I'm sorry. I was just</p> <p>25 answering you. Thank you.</p>



<p>Page 250</p> <p>1 N. Dondero</p> <p>2 Q. Okay. So take a look at</p> <p>3 Interrogatory No. 6 below.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And your response was, "Other</p> <p>7 than generally approving compensation,</p> <p>8 including the agreements at issue in this</p> <p>9 notes proceeding, none."</p> <p>10 Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. What does "Other than generally</p> <p>13 approving compensation" refer to?</p> <p>14 A. Well, "Other than generally..."</p> <p>15 I'm assuming it means the</p> <p>16 forgiveness of the loan, "Other than</p> <p>17 generally approving compensation."</p> <p>18 Q. Okay. So let's look at the</p> <p>19 Interrogatory. This Interrogatory</p> <p>20 specifically says that "Other than the</p> <p>21 agreement" –</p> <p>22 A. Okay.</p> <p>23 Q. – "identify every agreement you</p> <p>24 ever entered into as a representative of a</p> <p>25 majority of Class A shareholders of</p>	<p>Page 251</p> <p>1 N. Dondero</p> <p>2 plaintiff."</p> <p>3 Do you see that?</p> <p>4 A. I do.</p> <p>5 Q. Are you aware of any agreement</p> <p>6 that you ever entered into as a</p> <p>7 representative of a majority of Class A</p> <p>8 shareholders of plaintiff other than the</p> <p>9 agreements that you've identified?</p> <p>10 A. No.</p> <p>11 Q. Okay. And were you, in your</p> <p>12 capacity as the trustee of Dugaboy –</p> <p>13 withdrawn.</p> <p>14 Did you, in your capacity as</p> <p>15 trustee of Dugaboy, approve compensation</p> <p>16 for any affiliate of Strand other than the</p> <p>17 three agreements that you entered into that</p> <p>18 you've described today?</p> <p>19 A. Not that I'm aware of.</p> <p>20 Q. Okay. So generally approving</p> <p>21 compensation, does that have any meaning at</p> <p>22 all other than the three agreements that</p> <p>23 you entered into that you've described</p> <p>24 today?</p> <p>25 A. No.</p>
<p>Page 252</p> <p>1 N. Dondero</p> <p>2 MR. MORRIS: Can we put up –</p> <p>3 withdrawn. Hold on.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. Before we take this down, did</p> <p>6 Dugaboy provide – withdrawn.</p> <p>7 Did Dugaboy approve any</p> <p>8 compensation for Jim Dondero other than the</p> <p>9 three agreements that you've described</p> <p>10 today?</p> <p>11 A. I do not believe so since I've</p> <p>12 been trustee.</p> <p>13 MR. MORRIS: Can we put up</p> <p>14 Exhibit No. 26, please, which would</p> <p>15 have been Dugaboy's discovery</p> <p>16 responses?</p> <p>17 (N. Dondero Exhibit 26, Defendant</p> <p>18 the Dugaboy Investment Trust's</p> <p>19 Objections and Responses to Plaintiff's</p> <p>20 Request for Admission, Interrogatories,</p> <p>21 and Requests for Production, marked for</p> <p>22 identification, as of this date.)</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. And that was No. 26 in the</p> <p>25 binder.</p>	<p>Page 253</p> <p>1 N. Dondero</p> <p>2 A. Okay. Um-hmm.</p> <p>3 Q. Have you seen this document</p> <p>4 before?</p> <p>5 A. I believe so, yes.</p> <p>6 Q. And can you turn to page 14?</p> <p>7 A. Yes.</p> <p>8 Q. Is that your signature?</p> <p>9 A. It is.</p> <p>10 Q. And did you review this document</p> <p>11 before you signed it?</p> <p>12 A. I did.</p> <p>13 Q. And did you have an opportunity</p> <p>14 to consult with counsel before you signed</p> <p>15 it?</p> <p>16 A. I did.</p> <p>17 Q. And did you in fact consult with</p> <p>18 counsel before you signed it?</p> <p>19 A. I did.</p> <p>20 Q. As you sit here right now, in</p> <p>21 your capacity as the trustee of the Dugaboy</p> <p>22 Trust, do you know of anything in the</p> <p>23 objections and responses that is wrong or</p> <p>24 inaccurate?</p> <p>25 (Document review.)</p>

<p>Page 254</p> <p>1 N. Dondero</p> <p>2 A. I don't see anything that needs</p> <p>3 to be changed.</p> <p>4 Q. As you sit here right now, as the</p> <p>5 trustee of the Dugaboy Trust, do you have</p> <p>6 any reason to amend your objections or</p> <p>7 responses to make them more complete or</p> <p>8 more precise?</p> <p>9 A. I have no reason at this time,</p> <p>10 John.</p> <p>11 Q. Okay. I think I have kind of the</p> <p>12 same questions that I just asked you about</p> <p>13 your discovery responses, but let's see.</p> <p>14 Can we turn to page 8, which</p> <p>15 again has responses to request for</p> <p>16 admission No. 7 and 8?</p> <p>17 A. Okay.</p> <p>18 Q. And if you take a look request</p> <p>19 for admission No. 7 and the response, can</p> <p>20 you just read the that to yourself and tell</p> <p>21 me when you're finished?</p> <p>22 (Witness complies.)</p> <p>23 A. I'm done.</p> <p>24 Q. Okay. Would your response be</p> <p>25 accurate as follows: Dugaboy is not aware</p>	<p>Page 255</p> <p>1 N. Dondero</p> <p>2 of any document that was created prior to</p> <p>3 the commencement of the adversary</p> <p>4 proceeding that reflects or memorializes</p> <p>5 the terms of the agreement?</p> <p>6 A. That is correct.</p> <p>7 Q. Okay. Moving to request for</p> <p>8 admission No. 8, the same thing, can you</p> <p>9 just read the request and the response to</p> <p>10 yourself and let me know when you're</p> <p>11 finished?</p> <p>12 (Witness complies.)</p> <p>13 A. I'm done, John.</p> <p>14 Q. Okay. Would it be fair to</p> <p>15 interpret your response as follows:</p> <p>16 Dugaboy is not aware of any document that</p> <p>17 was created prior to the commencement of</p> <p>18 the adversary proceeding concerning the</p> <p>19 existence of the agreement?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. And let's go to</p> <p>22 Interrogatory No. 5.</p> <p>23 Are your answers in your capacity</p> <p>24 as – and if you want me to go through it</p> <p>25 again, I'm happy to do it, but I just need</p>
<p>Page 256</p> <p>1 N. Dondero</p> <p>2 to know in the first instance, is there any</p> <p>3 difference – will your answers concerning</p> <p>4 Interrogatory No. 5 be any different in</p> <p>5 your capacity as the Dugaboy trustee than</p> <p>6 they were in your individual capacity?</p> <p>7 A. Let me read it, John.</p> <p>8 Q. Take your time.</p> <p>9 (Document review.)</p> <p>10 A. It's the same as the one earlier.</p> <p>11 Q. Okay. And finally, let's just</p> <p>12 look at Interrogatory No. 6. Please take a</p> <p>13 look at that and the response and let me</p> <p>14 know if your answers in your capacity as</p> <p>15 the trustee of the Dugaboy Trust would</p> <p>16 differ in any way from the answers that you</p> <p>17 gave pertaining to Interrogatory No. 6 in</p> <p>18 your individual capacity.</p> <p>19 A. No, it's the same.</p> <p>20 Q. Okay.</p> <p>21 MR. MORRIS: So the time right</p> <p>22 now is 4:57 Eastern, I guess 3:57 your</p> <p>23 time. I'm done with my outline, but I</p> <p>24 just want to check my notes to see if I</p> <p>25 have anything left.</p>	<p>Page 257</p> <p>1 N. Dondero</p> <p>2 Douglas, you'll be happy to know</p> <p>3 that I do expect to finish well in</p> <p>4 advance of 4:30 Central time. So why</p> <p>5 don't we just take a break and we'll</p> <p>6 come back at, I guess, 4:10 Central</p> <p>7 time?</p> <p>8 THE WITNESS: Okay.</p> <p>9 THE VIDEOGRAPHER: The time is</p> <p>10 3:57. We are going off the record.</p> <p>11 (Recess is taken.)</p> <p>12 THE VIDEOGRAPHER: The time is</p> <p>13 12:15. We are back on the record.</p> <p>14 MR. MORRIS: This is John Morris.</p> <p>15 I have no further questions of this</p> <p>16 witness at this time.</p> <p>17 Does anybody else have any</p> <p>18 questions?</p> <p>19 MS. DEITSCH-PEREZ: Reserve for</p> <p>20 trial.</p> <p>21 MR. MORRIS: So are we in</p> <p>22 agreement that we can close the record</p> <p>23 right now?</p> <p>24 MR. DRAPER: Yes.</p> <p>25 MR. MORRIS: Thank you very much</p>

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1 N. Dondero  
 2 everybody. Ms. Dondero, thank you.  
 3 THE VIDEOGRAPHER: The time is  
 4 4:16. This concludes today's  
 5 deposition, Monday, October 18, 2021.  
 6 (Time noted: 4:16 p.m.)

7  
 8 \_\_\_\_\_  
 9 NANCY DONDERO

10  
 11  
 12 Subscribed and sworn to before me  
 13 this day of 2021.

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1  
 2 CERTIFICATE

3  
 4 STATE OF FLORIDA )  
 5 : ss.  
 6 COUNTY OF PALM BEACH )

7  
 8 I, ANNETTE ARLEQUIN, a Notary  
 9 Public within and for the State of New  
 10 York, do hereby certify:

11 That NANCY DONDERO, whose  
 12 deposition is hereinbefore set forth,  
 13 was duly sworn by me, and that the  
 14 transcript of such depositions is a  
 15 true record of the testimony given by  
 16 such witness.

17 I further certify that I am not  
 18 related to any of the parties to this  
 19 action by blood or marriage; and that I  
 20 am in no way interested in the outcome  
 21 of this matter.

22 IN WITNESS WHEREOF, I have hereunto  
 23 set my hand this 18th day of October, 2021.

24 \_\_\_\_\_  
 25 ANNETTE ARLEQUIN, CCR, RPR, CRR, RSA

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1  
 2 ERRATA SHEET FOR THE TRANSCRIPT OF:

3 CASE NAME: IN RE: HIGHLAND CAPITAL MANAGEMENT

4 DATE: OCTOBER 18, 2021

5 DEPONENT: NANCY DONDERO

6 Pg. Ln. Now Reads Should Read Reason

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12 — — — — —

13 — — — — —

14 — — — — —

15 — — — — —

16 — — — — —

17 — — — — —

18 — — — — —

19 NANCY DONDERO

20 SUBSCRIBED AND SWORN BEFORE ME

21 THIS \_\_\_ DAY OF \_\_\_ 2021.

22 — — — — —

23 — — — — —

24 (Notary Public)

25 MY COMMISSION EXPIRES: \_\_\_\_\_

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## **EXHIBIT 101**

1  
2 IN THE UNITED STATES BANKRUPTCY COURT

3 FOR THE NORTHERN DISTRICT OF TEXAS

4 DALLAS DIVISION

5 Case No. 2021-1193

6 -----X

7 In Re: Chapter 11

8 HIGHLAND CAPITAL MANAGEMENT, L.P. Case No.

9 Debtor, 19-34054-sqj11

10 -----X

11 HIGHLAND CAPITAL MANAGEMENT, L.P.,

12 Plaintiff, Adversary

13 -vs- Proceeding No.

14 NEXPOINT ADVISORS, L.P., JAMES 21-03005-sqj11

15 DONDERO, NANCY DONDERO, and the

16 DUGABOY INVESTMENT TRUST,

17 Defendants.

18 -----X

19 REMOTE VIDEOTAPED DEPOSITION OF ALAN JOHNSON

20 Tuesday, November 2, 2021

21  
22 Reported by:

23 Amy A. Rivera, CSR, RPR, CLR

24 JOB NO. 202068

<p>Page 2</p> <p>1</p> <p>2 November 2, 2021</p> <p>3 9:02 a.m.</p> <p>4</p> <p>5 REMOTE videotaped deposition of ALAN</p> <p>6 JOHNSON held pursuant to Notice, before Amy A.</p> <p>7 Rivera, Certified Shorthand Reporter, Registered</p> <p>8 Professional Reporter, Certified LiveNote Reporter,</p> <p>9 and a Notary Public of the States of New York, New</p> <p>10 Jersey and Delaware.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 3</p> <p>1</p> <p>2 R E M O T E A P P E A R A N C E S:</p> <p>3 PACHULSKI STANG ZIEHL &amp; JONES</p> <p>4 Attorneys for Highland Capital Management, L.P.</p> <p>5 780 Third Avenue</p> <p>6 New York, NY 10017</p> <p>7 BY: JOHN MORRIS, ESQ.</p> <p>8 HAYLEY WINOGRAD, ESQ.</p> <p>9</p> <p>10 STINSON</p> <p>11 Attorneys for James Dondero, HCRE, HCMS</p> <p>12 3102 Oak Lawn Avenue</p> <p>13 Dallas, TX 75219</p> <p>14 BY: MICHAEL AIGEN, ESQ.</p> <p>15 DEBORAH DEITSCH-PEREZ, ESQ.</p> <p>16</p> <p>17 GREENBERG TRAURIG</p> <p>18 Attorneys for Nancy Dondero</p> <p>19 2200 Ross Avenue</p> <p>20 Dallas, TX 75201</p> <p>21 BY: DANIEL ELMS, ESQ.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>Page 4</p> <p>1</p> <p>2 ALSO PRESENT:</p> <p>3 Michael Landis</p> <p>4 Deborah Newman</p> <p>5 Michael Perniciaro</p> <p>6 La Asia Canty</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 5</p> <p>1 ALAN JOHNSON</p> <p>2 COURT REPORTER: Good morning,</p> <p>3 Counsel.</p> <p>4 My name is Amy Rivera. I am a</p> <p>5 certified court reporter in association with</p> <p>6 TSG Reporting, Inc.</p> <p>7 Due to the severity of the COVID-19</p> <p>8 and following the practice of social</p> <p>9 distancing, I will not be in the same room</p> <p>10 with the witness but will record this</p> <p>11 deposition remotely and will swear the</p> <p>12 witness remotely.</p> <p>13 Do all parties stipulate to the</p> <p>14 validity of the remote recording and remote</p> <p>15 swearing and that it will be admissible in</p> <p>16 the courtroom as if it had been taken</p> <p>17 following Rule 30 and other rules of the</p> <p>18 Federal Rules of Civil Procedures and the</p> <p>19 state's rules where this case is pending?</p> <p>20 MR. MORRIS: John Morris, Pachulski</p> <p>21 Stang Ziehl &amp; Jones, for Highland Capital</p> <p>22 Management, L.P.</p> <p>23 We stipulate.</p> <p>24 MR. AIGEN: Michael Aigen from</p> <p>25 Stinson.</p>

<p>Page 6</p> <p>1 ALAN JOHNSON</p> <p>2 And I'm here with Deborah</p> <p>3 Deitsch-Perez.</p> <p>4 And we also stipulate.</p> <p>5 MR. ELMS: Daniel Elms, Greenberg</p> <p>6 Traurig, on behalf of Nancy Dondero.</p> <p>7 We stipulate.</p> <p>8 ALAN JOHNSON, having been duly sworn</p> <p>9 by the Notary Public, testified as follows:</p> <p>10 MR. MORRIS: Thank you.</p> <p>11 EXAMINATION</p> <p>12 Q. Good morning, Mr. Johnson.</p> <p>13 Can you hear me?</p> <p>14 A. Yes, you're very clear.</p> <p>15 Q. Okay.</p> <p>16 My name is John Morris. I'm an</p> <p>17 attorney at Pachulski Stang Ziehl &amp; Jones, and we</p> <p>18 represent Highland Capital Management.</p> <p>19 We're here today for your deposition.</p> <p>20 Do you understand that?</p> <p>21 A. Yes.</p> <p>22 Q. And do I understand correctly that</p> <p>23 you've been engaged to provide expert testimony in</p> <p>24 this matter?</p> <p>25 A. Yes.</p>	<p>Page 7</p> <p>1 ALAN JOHNSON</p> <p>2 Q. Do you have a general understanding of</p> <p>3 the nature of the litigation in which your expert</p> <p>4 testimony is being offered?</p> <p>5 A. At a high level, I do, yes.</p> <p>6 Q. Can you tell me what your general</p> <p>7 understanding at a high level is in the pending</p> <p>8 litigation?</p> <p>9 A. The litigation involves loans for</p> <p>10 Mr. Dondero that were taken out during – over a</p> <p>11 period of years.</p> <p>12 Late in 2018 and '19, the loans were</p> <p>13 consolidated and modified to put in place</p> <p>14 acceleration features, if – if the specific</p> <p>15 transactions occurred, so that at least – there's</p> <p>16 a lot of litigation, but as I understand what I'm</p> <p>17 involved is these loans that accumulated over a</p> <p>18 period of years, the practices of loans, and I'm</p> <p>19 also opining on his market compensation over the</p> <p>20 period 2013 through 2019.</p> <p>21 Q. Do you know who the obligors are under</p> <p>22 the loans you've just mentioned?</p> <p>23 A. Obligor? Could you explain – give</p> <p>24 me more detail what you're looking for?</p> <p>25 Q. Sure.</p>
<p>Page 8</p> <p>1 ALAN JOHNSON</p> <p>2 Do you know who own – who the loan</p> <p>3 was made to – withdrawn.</p> <p>4 Do you know who the loan – I think</p> <p>5 you used the word, plural, "loans," so let me ask,</p> <p>6 using your word, if I have that correctly, do you</p> <p>7 know who Highland made the loans to that are the</p> <p>8 subject of the litigation?</p> <p>9 A. I'm not clear, no.</p> <p>10 Q. Okay.</p> <p>11 You don't have an understanding as you</p> <p>12 sit here today as to who the loans Highland made</p> <p>13 to that are the subject of the litigation.</p> <p>14 Do I have that right?</p> <p>15 A. If I understand it, the loans</p> <p>16 criss-crossed differently to different entities,</p> <p>17 so I'm not exactly sure how all that was</p> <p>18 structured.</p> <p>19 Q. Okay.</p> <p>20 You've been deposed before, right?</p> <p>21 A. Yes.</p> <p>22 Q. Okay.</p> <p>23 And you've served as an expert before,</p> <p>24 right?</p> <p>25 A. Yes.</p>	<p>Page 9</p> <p>1 ALAN JOHNSON</p> <p>2 Q. In fact, you've been retained by my</p> <p>3 firm to provide expert services in the area of</p> <p>4 executive compensation. Is that right?</p> <p>5 A. Yes. Yes, I have.</p> <p>6 MR. MORRIS: Mr. Kornfeld sends his</p> <p>7 best regards.</p> <p>8 THE WITNESS: Thank you.</p> <p>9 MR. MORRIS: You bet.</p> <p>10 Q. So I don't know if you've given remote</p> <p>11 depositions before, but just very, very</p> <p>12 preliminarily, since you are an experienced</p> <p>13 witness, we'll be looking at a number of documents</p> <p>14 today, and if I put something up on the screen and</p> <p>15 you believe that you need to see more of the</p> <p>16 document, will you let me know that?</p> <p>17 A. Sure.</p> <p>18 Q. Where are you sitting right now?</p> <p>19 A. My home in New Jersey.</p> <p>20 Q. Okay.</p> <p>21 Do you have any documents in front of</p> <p>22 you right now?</p> <p>23 A. No.</p> <p>24 Q. Do you have a telephone?</p> <p>25 A. Yes, I do.</p>

<p>Page 10</p> <p>1 ALAN JOHNSON</p> <p>2 Q. Is it on right now?</p> <p>3 A. Yes. It is my cell phone.</p> <p>4 Q. Could I trouble you to just turn it</p> <p>5 off?</p> <p>6 You know what, if you're not</p> <p>7 comfortable for personal reasons, could I ask you</p> <p>8 not to look at your phone unless it rings and it's</p> <p>9 your child or spouse?</p> <p>10 A. Let me put it out of arm's reach and</p> <p>11 put it upside down, how's that?</p> <p>12 Q. That's fair. That's fair.</p> <p>13 I've taken a look at your report that</p> <p>14 you prepared back in May. Based on that report,</p> <p>15 do I have it correct that you've spent your entire</p> <p>16 career as an executive compensation consultant?</p> <p>17 A. Yes, that is correct.</p> <p>18 Q. And you've had your own executive</p> <p>19 compensation consulting firm since the early '90s.</p> <p>20 Is that right?</p> <p>21 A. Yes.</p> <p>22 Q. And your firm specializes in</p> <p>23 compensation consulting for the financial services</p> <p>24 industry, correct?</p> <p>25 A. Yes.</p>	<p>Page 11</p> <p>1 ALAN JOHNSON</p> <p>2 Q. You've advised major asset management</p> <p>3 and investment firms on issues concerning</p> <p>4 executive compensation. Is that right?</p> <p>5 A. Yes.</p> <p>6 Q. You've advised hedge funds and other</p> <p>7 alternative firms on issues concerning executive</p> <p>8 compensation, correct?</p> <p>9 A. Yes.</p> <p>10 Q. According to your report, did I read</p> <p>11 this correctly that your firm's clients include</p> <p>12 many of the world's most significant financial</p> <p>13 institutions?</p> <p>14 A. Yes, they do – it does.</p> <p>15 Q. Have you personally ever been retained</p> <p>16 by a board of directors to provide advice</p> <p>17 concerning executive compensation?</p> <p>18 A. Many times.</p> <p>19 Q. Can you give me a rough number? Is it</p> <p>20 more than 20?</p> <p>21 A. Board of directors? More than 20.</p> <p>22 Q. More than 50?</p> <p>23 A. I don't know. It may – it's a lot.</p> <p>24 Q. Is it fair to say it's somewhere</p> <p>25 between 20 and 50 and it could even be more?</p>
<p>Page 12</p> <p>1 ALAN JOHNSON</p> <p>2 A. Probably more than 50.</p> <p>3 Q. Have you ever been retained by a</p> <p>4 compensation committee of a board of directors to</p> <p>5 provide advice?</p> <p>6 A. Yes.</p> <p>7 Q. And if I separate that from boards of</p> <p>8 directors generally, is that also a number that</p> <p>9 measures in the dozens?</p> <p>10 A. At least.</p> <p>11 Q. Other than boards of directors and</p> <p>12 compensation committees of boards of directors,</p> <p>13 can you identify generally any other decision</p> <p>14 makers that you've been retained by to give advice</p> <p>15 on areas of executive compensation?</p> <p>16 A. We – we get involved from time to</p> <p>17 time with business owners. That might be a</p> <p>18 private equity firm or hedge fund looking at their</p> <p>19 portfolio companies.</p> <p>20 We also do a lot of project work. So</p> <p>21 that would involve working with senior leaders of</p> <p>22 different financial services firms to look at</p> <p>23 either their whole compensation program or the</p> <p>24 programs for particular units.</p> <p>25 We also from time to time get involved</p>	<p>Page 13</p> <p>1 ALAN JOHNSON</p> <p>2 with some of the major consulting firms where</p> <p>3 they – we provide advice to them as they work</p> <p>4 with their clients on financial services</p> <p>5 compensation.</p> <p>6 Q. Okay.</p> <p>7 And what is it that you sell? Can you</p> <p>8 describe for me, if you were giving a sales pitch,</p> <p>9 why a board or a compensation committee should</p> <p>10 hire you?</p> <p>11 A. Well, we have a lot of experience in</p> <p>12 the space across financial services. So we have a</p> <p>13 large home-field advantage of knowledge,</p> <p>14 experiences. We know the nuances of what goes on</p> <p>15 in the industry. That's part of the sales pitch.</p> <p>16 We also are good consultants. We –</p> <p>17 we listen. We are experts at looking at</p> <p>18 information and data and all that.</p> <p>19 And at the end of the sales pitch, I</p> <p>20 usually say, We also have big scans, so we're used</p> <p>21 to dealing with difficult people.</p> <p>22 So many of the people in financial</p> <p>23 services are opinionated and, at times, difficult,</p> <p>24 so a lot of experience across cycles. We're</p> <p>25 comfortable giving clients difficult news, and</p>



<p>Page 14</p> <p>1 ALAN JOHNSON</p> <p>2 we're good at what we do.</p> <p>3 Q. And is it fair to say you have</p> <p>4 expertise in the area of executive compensation?</p> <p>5 A. Absolutely.</p> <p>6 Q. And is it fair to say that part of</p> <p>7 that expertise is knowing the marketplace?</p> <p>8 A. Absolutely.</p> <p>9 Q. And is part of that expertise knowing</p> <p>10 or being familiar with the current trends in the</p> <p>11 marketplace?</p> <p>12 A. Yes, absolutely.</p> <p>13 Q. And would you say that you have a</p> <p>14 really good understanding of how to structure</p> <p>15 compensation plans that are appropriate to the</p> <p>16 clients that you serve?</p> <p>17 A. Yes.</p> <p>18 Q. And one of the things that we're here</p> <p>19 to discuss today is the concept of forgivable</p> <p>20 loans.</p> <p>21 Do you understand that?</p> <p>22 A. Yes.</p> <p>23 Q. And your client is James Dondero.</p> <p>24 Do I have that right?</p> <p>25 A. I was retained by Stinson, but they</p>	<p>Page 15</p> <p>1 ALAN JOHNSON</p> <p>2 represent him, yes.</p> <p>3 Q. Okay. We'll talk about that just a</p> <p>4 bit more.</p> <p>5 I'm going to read from your report.</p> <p>6 If you want me to put it up on the screen, I'm</p> <p>7 happy, but I want to focus just on one sentence of</p> <p>8 your report that says that you understand from</p> <p>9 Mr. Dondero that "The 2018 loans that are the</p> <p>10 subject of this suit were modified by agreement in</p> <p>11 late 2018 or early 2019 under which the loans</p> <p>12 would be forgiven upon the sale at over cost of</p> <p>13 substantially all of any three portfolio companies</p> <p>14 held in the Highland platform."</p> <p>15 Do you remember that?</p> <p>16 A. Yes.</p> <p>17 Q. Would you like to see it so you can</p> <p>18 see the context?</p> <p>19 A. I think I understand it.</p> <p>20 Q. Okay. So that's the sentence that I</p> <p>21 want to focus on.</p> <p>22 Is the agreement that you described</p> <p>23 the only agreement that you're aware of pertaining</p> <p>24 to Highland and Mr. Dondero and the forgiveness of</p> <p>25 loans or do you understand there's more than one</p>
<p>Page 16</p> <p>1 ALAN JOHNSON</p> <p>2 agreement?</p> <p>3 A. When I discussed it with Mr. Dondero,</p> <p>4 I believed there was a single agreement, but that</p> <p>5 I'm not sure of. I think that's the – what I got</p> <p>6 out of him.</p> <p>7 Q. Okay.</p> <p>8 You haven't been informed that more</p> <p>9 than one agreement exists.</p> <p>10 Do I have that right?</p> <p>11 A. I don't believe so.</p> <p>12 Q. Okay.</p> <p>13 Do you know how many loans are the</p> <p>14 subject of the agreement?</p> <p>15 A. There were – they were consolidated,</p> <p>16 I believe, in late '18 or '19. Originally, there</p> <p>17 were a lot more. I think they're down to a</p> <p>18 couple, if I recall.</p> <p>19 Q. Is it relevant to your analysis to</p> <p>20 know the number of loans that are the subject of</p> <p>21 the agreement?</p> <p>22 A. I don't think so.</p> <p>23 Q. Do you know the aggregate value of the</p> <p>24 loans that are the subject of the agreement that</p> <p>25 you referred to in your report?</p>	<p>Page 17</p> <p>1 ALAN JOHNSON</p> <p>2 A. I think the total of the loans is</p> <p>3 somewhere in the 40 to \$50 million range, if</p> <p>4 that – I think that's what I read.</p> <p>5 Q. And where did you read that?</p> <p>6 A. I think in all the documents, when I</p> <p>7 tried to parse out the – all the loans, I think</p> <p>8 it totaled to something like 40 to \$50 million, if</p> <p>9 I recall.</p> <p>10 Q. And can you describe the document that</p> <p>11 you're referring to?</p> <p>12 A. There were a bunch of loan agreements</p> <p>13 in all the different materials. I don't recall</p> <p>14 where I saw them.</p> <p>15 Q. Okay.</p> <p>16 Is the value of the – is the</p> <p>17 aggregate value of the loans relevant to your</p> <p>18 analysis?</p> <p>19 A. No.</p> <p>20 Q. Do you know anything about the loans</p> <p>21 that are the subject of the agreement other than</p> <p>22 what you've written in your report?</p> <p>23 A. Subsequent to the report, I've seen</p> <p>24 some of the documentation of the loans, so I've</p> <p>25 seen some amounts and the period of the loans, the</p>

<p>Page 18</p> <p>1 ALAN JOHNSON</p> <p>2 interest rates and so forth.</p> <p>3 Q. When did you see that documentation?</p> <p>4 A. In the last week or so, prior to this</p> <p>5 deposition.</p> <p>6 Q. Have you amended your report?</p> <p>7 A. I have not.</p> <p>8 Q. So are any of the conclusions altered</p> <p>9 at all by any of the documents you've seen</p> <p>10 recently?</p> <p>11 A. No.</p> <p>12 Q. And now that I am aware that you've</p> <p>13 seen certain loan documentation, I'll ask you</p> <p>14 again if you can identify any obligor under any of</p> <p>15 the loans other than Mr. Dondero?</p> <p>16 A. I'm sorry. I just didn't pay that</p> <p>17 much attention. I was looking – I don't</p> <p>18 remember.</p> <p>19 Q. Do you recall if the loans were demand</p> <p>20 loans or term loans?</p> <p>21 A. The ones I recall were – they were</p> <p>22 for a very long period of time, I think 30 years.</p> <p>23 They were – they were 30-year term loan.</p> <p>24 Q. And do you recall how many 30-year</p> <p>25 term loans you saw?</p>	<p>Page 19</p> <p>1 ALAN JOHNSON</p> <p>2 A. I recall at least a couple.</p> <p>3 Q. Did you see any demand loans?</p> <p>4 A. I don't recall seeing any.</p> <p>5 Q. Have you ever seen any written</p> <p>6 agreement covering the forgiveness of any loans</p> <p>7 that Highland extended to Mr. Dondero?</p> <p>8 A. I have not.</p> <p>9 Q. Have you ever seen any written</p> <p>10 agreement covering the forgiveness of any loans</p> <p>11 that Highland extended to any corporate affiliate?</p> <p>12 A. I have not.</p> <p>13 Q. Have you ever seen any written</p> <p>14 agreement covering the forgiveness of any loans</p> <p>15 that Highland had ever extended to any person or</p> <p>16 entity in the world?</p> <p>17 A. I have not.</p> <p>18 Q. Have you seen any documents that</p> <p>19 describe the existence or terms of any forgiveness</p> <p>20 agreement between Highland and Mr. Dondero?</p> <p>21 A. I have not.</p> <p>22 Q. Have you seen any documents that</p> <p>23 describe the existence or terms of any forgiveness</p> <p>24 agreement between Highland and any corporate</p> <p>25 affiliate?</p>
<p>Page 20</p> <p>1 ALAN JOHNSON</p> <p>2 A. I have not.</p> <p>3 Q. Have you seen any documents that</p> <p>4 describe the existence or terms of any forgiveness</p> <p>5 agreement between Highland and any person or</p> <p>6 entity in the world?</p> <p>7 A. I have not.</p> <p>8 Q. So is it fair to say that you have not</p> <p>9 seen any documentary evidence of any loan</p> <p>10 forgiveness agreement between Highland and anybody</p> <p>11 in the world?</p> <p>12 A. I have not seen any documents, that's</p> <p>13 right.</p> <p>14 Q. Okay.</p> <p>15 The agreement that Mr. Dondero</p> <p>16 described for you, do you understand that that is</p> <p>17 an oral agreement?</p> <p>18 A. I don't think he said to me it was an</p> <p>19 oral agreement. He described it to me. I</p> <p>20 don't – I don't think he – I don't remember if</p> <p>21 he characterized it as an oral agreement, but he</p> <p>22 described how – he described how – in his</p> <p>23 opinion, how the agreement worked.</p> <p>24 I don't – I don't recall if he</p> <p>25 mentioned it was just verbal or it was written. I</p>	<p>Page 21</p> <p>1 ALAN JOHNSON</p> <p>2 don't – that, I don't recall.</p> <p>3 Q. Did you ask Mr. Dondero or any of his</p> <p>4 attorneys if there was a written agreement?</p> <p>5 A. I don't recall if that came up. It</p> <p>6 may very well have, I don't remember whether we –</p> <p>7 whether there was an agreement or not. I just</p> <p>8 don't recall.</p> <p>9 Q. Did you or anybody working on your</p> <p>10 behalf ever ask Mr. Dondero or anybody working on</p> <p>11 his behalf if there were any documents that</p> <p>12 reflect the existence or terms of any forgiveness</p> <p>13 agreement that Highland ever entered into?</p> <p>14 A. When I talked to executives at</p> <p>15 Highland, we asked – or former executives about</p> <p>16 loans, we talked about documentation.</p> <p>17 They just didn't have any</p> <p>18 documentation of the loans they had had. They</p> <p>19 described the fact that several of them had been</p> <p>20 forgiven. The documentation had existed at one</p> <p>21 time, but they don't – they didn't keep it or</p> <p>22 didn't have it available.</p> <p>23 So we talked about that, but...</p> <p>24 Q. You're not offering any opinion as to</p> <p>25 whether an agreement actually exists pertaining to</p>

<p>Page 22</p> <p>1 ALAN JOHNSON</p> <p>2 the forgiveness of any loans that Highland</p> <p>3 extended to Mr. Dondero or his affiliates, are</p> <p>4 you?</p> <p>5 A. I am not.</p> <p>6 Q. You're not offering any opinion as to</p> <p>7 the terms of any alleged agreement between</p> <p>8 Mr. Dondero and Highland concerning the</p> <p>9 forgiveness of loans, are you?</p> <p>10 A. I am not.</p> <p>11 Q. You're not offering any opinions on</p> <p>12 the reasonableness of any of the terms of any</p> <p>13 alleged agreement between Mr. Dondero and Highland</p> <p>14 concerning the forgiveness of loans, are you?</p> <p>15 A. I am not.</p> <p>16 Q. You've been informed that this</p> <p>17 modification was intended to provide Mr. Dondero</p> <p>18 with additional compensation based on the</p> <p>19 satisfaction of what we've been calling "certain</p> <p>20 conditions subsequent." Is that fair?</p> <p>21 A. As I understood it, the loans</p> <p>22 existed – I don't know. I don't know if that's a</p> <p>23 fair characterization.</p> <p>24 I think the loans were modified –</p> <p>25 that, I'd have to really think about, because the</p>	<p>Page 23</p> <p>1 ALAN JOHNSON</p> <p>2 loans themselves may have been already</p> <p>3 compensation.</p> <p>4 I guess these would have actualized</p> <p>5 the compensation, so it certainly – if these</p> <p>6 loans were modified with the performance</p> <p>7 characteristic, it would have turned it in from</p> <p>8 perhaps deferred compensation into actual</p> <p>9 compensation.</p> <p>10 So it would have changed the</p> <p>11 characteristics of it, but I'm not sure it created</p> <p>12 compensation. There may have already been</p> <p>13 compensation in these loans in the first place.</p> <p>14 Q. Is it fair to say that you're</p> <p>15 speculating on that?</p> <p>16 A. There's some speculation there, yes.</p> <p>17 Q. Do you have any knowledge as to the</p> <p>18 intent of the parties when they entered into the</p> <p>19 modification agreement on the topic of</p> <p>20 forgiveness?</p> <p>21 A. Mr. Dondero described it as to reward</p> <p>22 him for actualizing – I guess there were three</p> <p>23 portfolio investments, and if they were – if a</p> <p>24 transaction occurred at more than the mark price,</p> <p>25 that was to reward him for having one of those</p>
<p>Page 24</p> <p>1 ALAN JOHNSON</p> <p>2 transactions occur.</p> <p>3 Q. Okay. So it was supposed to – your</p> <p>4 understanding from Mr. Dondero was that the</p> <p>5 agreement was intended to reward him if he</p> <p>6 achieved some level of performance in the future.</p> <p>7 Do I have that right?</p> <p>8 A. Yes.</p> <p>9 Q. Okay.</p> <p>10 Do you know what the purpose of any of</p> <p>11 the loans that are the subject of the forgiveness</p> <p>12 agreement was?</p> <p>13 A. Mr. Dondero described the – the loans</p> <p>14 as a way to invest in the business rather than</p> <p>15 paying out compensation. He described it, I</p> <p>16 think, as delayed gratification, that these funds</p> <p>17 then would be invested in the business rather than</p> <p>18 being paid out to him as – as current</p> <p>19 compensation.</p> <p>20 Q. Do you know what the – what the</p> <p>21 obligors under the various loans did with the</p> <p>22 proceeds that they received from Highland?</p> <p>23 A. Mr. Dondero described it as the</p> <p>24 proceeds would be reinvested in the business.</p> <p>25 Q. Do you have any source of information</p>	<p>Page 25</p> <p>1 ALAN JOHNSON</p> <p>2 as to the intent of the forgiveness agreement</p> <p>3 other than what Mr. Dondero told you?</p> <p>4 A. No.</p> <p>5 Q. Do you have any source of information</p> <p>6 other than Mr. Dondero as to the purpose of each</p> <p>7 of the loans that are the subject of the</p> <p>8 forgiveness agreement?</p> <p>9 A. Just going back to the prior comment,</p> <p>10 that he had described the general practice that</p> <p>11 the loans were to give him the ability to reinvest</p> <p>12 in the business, but not – not – that was in the</p> <p>13 totality, not loan by loan.</p> <p>14 Q. All right.</p> <p>15 But your sole source of information</p> <p>16 regarding that topic is Mr. Dondero.</p> <p>17 Do I have that right?</p> <p>18 A. It was – when I interviewed the other</p> <p>19 Highland – former Highland executives, they also</p> <p>20 described the general practice of that as well,</p> <p>21 that going back a long time, they were familiar</p> <p>22 with that idea of delaying it and reinvesting in</p> <p>23 the business.</p> <p>24 So that went back away, but most of</p> <p>25 it is Mr. Dondero.</p>

<p>Page 26</p> <p>1 ALAN JOHNSON</p> <p>2 Q. Did they tell you anything concerning</p> <p>3 the intent of the loans other than what you've</p> <p>4 just described?</p> <p>5 A. They described their individual</p> <p>6 circumstances around why the loans were made to</p> <p>7 them and the circumstances, but the intent of the</p> <p>8 loan itself, no. It just – some comments from</p> <p>9 them and Mr. Dondero.</p> <p>10 Q. Okay. I apologize, I probably wasn't</p> <p>11 clear here. I am only talking about the loans</p> <p>12 that are the subject of the forgiveness agreement</p> <p>13 that's – that's part of the lawsuit. I'm not</p> <p>14 talking about any loans to any prior employees.</p> <p>15 So I think – I think we may have been</p> <p>16 talking past each other, so let me try again.</p> <p>17 With respect to the purpose of each of</p> <p>18 the loans that are the subject of the pending</p> <p>19 lawsuit, do you have any source of information</p> <p>20 regarding their purpose other than Mr. Dondero?</p> <p>21 A. I do not.</p> <p>22 Q. Okay.</p> <p>23 Do you have any source of information</p> <p>24 other than Mr. Dondero concerning what the</p> <p>25 obligors of each of the loans that's subject to</p>	<p>Page 27</p> <p>1 ALAN JOHNSON</p> <p>2 the lawsuit did with the proceeds?</p> <p>3 A. Just a description from Mr. Dondero</p> <p>4 about the purpose of the – what the loans would</p> <p>5 be used for.</p> <p>6 Q. Okay.</p> <p>7 So your understanding from Mr. Dondero</p> <p>8 was that the purpose of the forgiveness agreement</p> <p>9 that he entered into in late 2018 or early 2019</p> <p>10 was to incentivize him to perform in the future,</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. And, in fact, your understanding is</p> <p>14 that under the modification agreement, the loans</p> <p>15 will only be forgiven if some future event occurs,</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. The loan was not intended to provide</p> <p>19 him for compensation for services previously</p> <p>20 rendered. Is that fair?</p> <p>21 A. No. As I – as I mentioned earlier,</p> <p>22 my speculation was that the – the loans were,</p> <p>23 using his words, delayed gratification. He paid</p> <p>24 himself and others less than the market wage and</p> <p>25 used loans as a form of compensation in the past.</p>
<p>Page 28</p> <p>1 ALAN JOHNSON</p> <p>2 Q. Well, if the assets subject to the</p> <p>3 agreement are not sold above cost, Mr. Dondero</p> <p>4 will never get any gratification. Is that</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 MR. AIGEN: Objection, form.</p> <p>8 Q. I think you said that you have</p> <p>9 experience giving advice concerning forgivable</p> <p>10 loans.</p> <p>11 Do I have that right?</p> <p>12 A. Yes.</p> <p>13 Q. And have you ever given advice on how</p> <p>14 to structure forgivable loans as part of executive</p> <p>15 compensation?</p> <p>16 A. Yes.</p> <p>17 Q. Can you please describe your</p> <p>18 experience in that area?</p> <p>19 A. From time to time, clients or we come</p> <p>20 up with using loans as a vehicle to incent and</p> <p>21 motivate executives and senior professionals. So</p> <p>22 we'll get involved in the magnitude of the loans,</p> <p>23 the terms, interest rates, you know, if there's</p> <p>24 performance attached to it, what the performance</p> <p>25 would be defined as.</p>	<p>Page 29</p> <p>1 ALAN JOHNSON</p> <p>2 So it would be around sizing,</p> <p>3 magnitudes, the terms, you know, of how the loans</p> <p>4 would work.</p> <p>5 Q. When giving advice – you know, I want</p> <p>6 to, if I can use, a phrase here during the</p> <p>7 deposition of "decision maker."</p> <p>8 If I use the word – the phrase</p> <p>9 "decision maker," will you understand that I mean</p> <p>10 the person who is acting on behalf of the employer</p> <p>11 to make the decision – to actually make the</p> <p>12 decision as to whether or not to forgive a loan?</p> <p>13 A. Okay.</p> <p>14 Q. Somebody has to act on behalf of the</p> <p>15 company – you would agree, based on your</p> <p>16 expertise, that somebody has to make the decision</p> <p>17 on behalf of the company whether or not to forgive</p> <p>18 loans. Is that fair?</p> <p>19 A. Well, it could be a committee like a</p> <p>20 board or a comp committee or others, but there</p> <p>21 needs to be somebody or person that decides.</p> <p>22 Q. Okay.</p> <p>23 So whether it's a board of directors</p> <p>24 or a special committee or a compensation committee</p> <p>25 or a CEO, if he or she is dealing with other</p>

<p>Page 30</p> <p>1 ALAN JOHNSON</p> <p>2 employees, I'm going to use the phrase "decision</p> <p>3 maker" to refer to that person or body who is</p> <p>4 making the decision on behalf of the employer to</p> <p>5 forgive a loan as part of executive compensation.</p> <p>6 Is that fair?</p> <p>7 A. Sure. Okay.</p> <p>8 Q. Okay.</p> <p>9 And you've given advice to decision</p> <p>10 makers using the definition that I've just</p> <p>11 described, correct?</p> <p>12 A. Yes.</p> <p>13 Q. Okay.</p> <p>14 When you give advice to decision</p> <p>15 makers who are considering whether to forgive</p> <p>16 loans as part of executive compensation, do you</p> <p>17 advise them to obtain any information before</p> <p>18 making that decision?</p> <p>19 A. You want them to be informed. Maybe</p> <p>20 they already have adequate information about</p> <p>21 circumstances, but you would certainly want them</p> <p>22 to be informed before they made a – certainly, a</p> <p>23 final decision.</p> <p>24 Q. And if you were giving expert advice</p> <p>25 to a decision maker, what areas would you tell</p>	<p>Page 31</p> <p>1 ALAN JOHNSON</p> <p>2 them that they ought to be informed on before they</p> <p>3 enter into a forgiveness?</p> <p>4 A. Make sure I understand the question,</p> <p>5 you're talking about before they do the agreement</p> <p>6 itself, not the forgiveness of it but structuring</p> <p>7 the agreement?</p> <p>8 Q. No. I apologize. I'm not talking</p> <p>9 about the underlying loan. I'm talking about the</p> <p>10 decision to enter into an agreement pursuant to</p> <p>11 which, you know, loans would be forgiven, what</p> <p>12 information should they have before they're –</p> <p>13 that kind of an agreement?</p> <p>14 A. Fair enough.</p> <p>15 They should understand the – the</p> <p>16 magnitude of the accomplishment that would be</p> <p>17 attached to the – to the loans.</p> <p>18 They should have a basic understanding</p> <p>19 of the magnitude of the loans, the magnitude of</p> <p>20 the events that they're incenting or rewarding, if</p> <p>21 it is – is there some proportionality between the</p> <p>22 success and the amount of loan forgiveness?</p> <p>23 They should have some idea of the</p> <p>24 probability of these accomplishments happening.</p> <p>25 Is it highly unlikely or very likely to happen?</p>
<p>Page 32</p> <p>1 ALAN JOHNSON</p> <p>2 So I think they should have some</p> <p>3 understanding of the proportionality. They should</p> <p>4 have some understanding of difficulty. And is it</p> <p>5 a – is it fair to forgive these loan if these</p> <p>6 events occur?</p> <p>7 Q. Let's talk about some information.</p> <p>8 In your opinion, should the decision</p> <p>9 maker be knowledgeable about the executive's</p> <p>10 compensation history before entering into an</p> <p>11 agreement concerning the forgiveness of any loans?</p> <p>12 A. The decision maker should have a</p> <p>13 general understanding of the pay history of the</p> <p>14 individual, the context of the company, the</p> <p>15 situation. It should – it would be one of the</p> <p>16 factors that you should – you should certainly be</p> <p>17 aware of.</p> <p>18 Q. And why do you believe that a decision</p> <p>19 maker should be knowledgeable about the</p> <p>20 executive's pay history before she, he or it</p> <p>21 agrees to forgive loans?</p> <p>22 A. I think in the real world, you want to</p> <p>23 understand the context. Has this executive been</p> <p>24 very well paid or poorly paid in the past? What</p> <p>25 is that individual's perspective on his or she's</p>	<p>Page 33</p> <p>1 ALAN JOHNSON</p> <p>2 pay history? I think that's relevant.</p> <p>3 You know, is the forgiveness of the</p> <p>4 loan significant enough to motivate the behaviors</p> <p>5 that you're trying to do? If that individual –</p> <p>6 if this is a trivial amount, then it won't have</p> <p>7 much of an impact. If it's overwhelming, maybe it</p> <p>8 will lead to behaviors that are not good, take too</p> <p>9 much risk or whatever.</p> <p>10 So, yes, you should be aware of the</p> <p>11 pay history, but also, the business context, how</p> <p>12 important is it for these events to happen. Is</p> <p>13 this – is this very significant in the company's</p> <p>14 future?</p> <p>15 So yes, you should be aware.</p> <p>16 Q. Can you think of any circumstances</p> <p>17 where it would be appropriate for a decision maker</p> <p>18 to agree to forgive loans as part of an</p> <p>19 executive's compensation without having an</p> <p>20 understanding of the executive's compensation</p> <p>21 history?</p> <p>22 A. Well, you – sometimes, you have new</p> <p>23 executives, so you wouldn't – you wouldn't have</p> <p>24 any pay history to be aware of. And some – many</p> <p>25 of our clients, the pay history is somewhat murky</p>



<p>Page 34</p> <p>1 ALAN JOHNSON</p> <p>2 or complicated, so it would not be ideal, but it</p> <p>3 certainly has happened.</p> <p>4 Q. So – so it happens, you think – the</p> <p>5 circumstances you can think of are for new</p> <p>6 employees or for people with murky compensation</p> <p>7 histories.</p> <p>8 Do I have that right?</p> <p>9 A. I think that would usually be the</p> <p>10 circumstances where you would at least have some</p> <p>11 good, general understanding of somebody's pay</p> <p>12 history.</p> <p>13 Q. Would you recommend that the decision</p> <p>14 maker seek information concerning the executive's</p> <p>15 compensation history before agreeing to forgive</p> <p>16 any loans?</p> <p>17 A. I – generally, advice, I would want</p> <p>18 to know that. So yes, I would suggest they find</p> <p>19 that out, if it's feasible or – but yes, that</p> <p>20 would be one of the things I would probably</p> <p>21 suggest.</p> <p>22 Q. Would you ever advise a decision maker</p> <p>23 to forgive loans without having an understanding</p> <p>24 of the executive's compensation history?</p> <p>25 A. I probably would not suggest that you</p>	<p>Page 35</p> <p>1 ALAN JOHNSON</p> <p>2 forgive the loans without having some knowledge of</p> <p>3 that. It's possible to get it.</p> <p>4 Q. Would you ever advise a decision maker</p> <p>5 to forgive loans as part of executive compensation</p> <p>6 without ever asking anybody for information</p> <p>7 relating to the executive's compensation history?</p> <p>8 A. I would not recommend that usually.</p> <p>9 Q. Okay. Let's talk about the entity's</p> <p>10 financial condition.</p> <p>11 In your opinion, is the entity's</p> <p>12 financial condition relevant for a decision maker</p> <p>13 to consider before entering into a loan</p> <p>14 forgiveness program?</p> <p>15 A. I think the financial condition is</p> <p>16 certainly relevant, and as I mentioned earlier,</p> <p>17 the significance of the events that you're trying</p> <p>18 to motivate.</p> <p>19 So yes, I think you want to know both.</p> <p>20 You'd want to know your financial condition and</p> <p>21 you want to know the significance of the events</p> <p>22 that you're trying to – to reward.</p> <p>23 Q. And why do you believe in your expert</p> <p>24 opinion that the decision maker should have an</p> <p>25 understanding of the entity's financial condition</p>
<p>Page 36</p> <p>1 ALAN JOHNSON</p> <p>2 before agreeing to forgive loans?</p> <p>3 A. Well, I think you'd want to know just</p> <p>4 would the forgiveness of these loans be</p> <p>5 significant to the financial condition of the</p> <p>6 company. It may be significant to the individual</p> <p>7 but be trivial to the overall organization, so I</p> <p>8 think you'd want to know are these loans</p> <p>9 significant in terms of the financial condition of</p> <p>10 the company.</p> <p>11 Q. Can you think of any circumstance</p> <p>12 where it would be appropriate for a decision maker</p> <p>13 to agree to forgive loans as part of executive</p> <p>14 compensation without having an understanding of</p> <p>15 the entity's financial condition?</p> <p>16 A. No. I don't think that would be</p> <p>17 ideal. I think you would certainly – you would</p> <p>18 want to know the condition of the business.</p> <p>19 Q. Okay. I'm not asking you what's</p> <p>20 ideal.</p> <p>21 Can you ever – can you fathom any</p> <p>22 scenario where it would be appropriate for a</p> <p>23 decision maker to agree to forgive loans without</p> <p>24 having an understanding of the employer's</p> <p>25 financial condition?</p>	<p>Page 37</p> <p>1 ALAN JOHNSON</p> <p>2 A. Well, I think if there's a chaotic</p> <p>3 financial situation, say the financial crisis or</p> <p>4 others where it's very difficult or impossible to</p> <p>5 get a clear understanding of the financial</p> <p>6 condition of the business or it's in dispute</p> <p>7 where – what the condition is.</p> <p>8 So that can exist, and I think in</p> <p>9 those situations you'd need to make a decision.</p> <p>10 Maybe forgiving the loans is appropriate even</p> <p>11 though you may not have a clear idea of the</p> <p>12 financial condition.</p> <p>13 So it's not ideal, but I've had</p> <p>14 clients, you know, where the financial condition</p> <p>15 was uncertain and different people had different</p> <p>16 opinions, but you still had to make a decision.</p> <p>17 So that's why I used the word "ideal."</p> <p>18 It would be ideal to have it, but sometimes you</p> <p>19 just don't have that – you don't have that</p> <p>20 clarity.</p> <p>21 Q. Do you have any reason to believe that</p> <p>22 during the seven-year period – withdrawn.</p> <p>23 Can you think of a circumstance where</p> <p>24 it would be appropriate for a decision maker to</p> <p>25 enter into a loan forgiveness program as part of</p>

<p>Page 38</p> <p>1 ALAN JOHNSON</p> <p>2 executive compensation without even asking for</p> <p>3 information relating to a company's financial</p> <p>4 condition?</p> <p>5 A. Well, I don't – if they already had a</p> <p>6 good familiarity, they perhaps often don't need to</p> <p>7 ask, but if they weren't clear, then they should</p> <p>8 ask.</p> <p>9 Q. Okay.</p> <p>10 Is it fair to say that you would never</p> <p>11 advise a decision maker to enter into a forgivable</p> <p>12 loan program as part of executive compensation</p> <p>13 without having an understanding of the entity's</p> <p>14 financial condition?</p> <p>15 A. Well, I think – as I said earlier, I</p> <p>16 think there are situations where you just can't</p> <p>17 know what the condition is. If – if – I think</p> <p>18 the decision maker should try to understand the</p> <p>19 condition of the business to the best of their</p> <p>20 ability, but if that's not possible, they still</p> <p>21 may have to make a decision on loans or other –</p> <p>22 other compensation elements.</p> <p>23 Q. Let's say it is possible to understand</p> <p>24 the entity's financial condition. In a</p> <p>25 hypothetical world, if you could understand the</p>	<p>Page 39</p> <p>1 ALAN JOHNSON</p> <p>2 entity's financial condition and it wasn't subject</p> <p>3 to dispute at that moment in time, would you be</p> <p>4 able to – would you ever advise the decision</p> <p>5 maker to enter into the loan forgiveness program</p> <p>6 without attempting to gain an understanding of</p> <p>7 that very financial condition?</p> <p>8 A. No. I would suggest to the client</p> <p>9 that they try to understand that condition.</p> <p>10 Q. And if there was information</p> <p>11 available, would you always advise your client to</p> <p>12 try to obtain that information concerning the</p> <p>13 entity's financial condition before entering into</p> <p>14 an agreement to forgive loans as part of executive</p> <p>15 compensation?</p> <p>16 A. I think you would almost always or</p> <p>17 often try to do that. I don't – again, there are</p> <p>18 practicalities of time frames and getting the data</p> <p>19 and so forth might enter into it, but yes, I think</p> <p>20 the – the general thesis is, if you're going to</p> <p>21 make forgivable loans, you should try to have an</p> <p>22 understanding of the condition of the business.</p> <p>23 Q. Okay. Let's drill down on that just a</p> <p>24 little bit and talk specifically about financial</p> <p>25 statements.</p>
<p>Page 40</p> <p>1 ALAN JOHNSON</p> <p>2 When I use the phrase "financial</p> <p>3 statements," I'm thinking of your traditional</p> <p>4 package in an audit report, the balance sheet,</p> <p>5 statement of operations, cash flow, P&amp;L</p> <p>6 statements.</p> <p>7 You're familiar with that type of</p> <p>8 document, right?</p> <p>9 A. Yes.</p> <p>10 Q. Okay.</p> <p>11 In your opinion, should a decision</p> <p>12 maker review and understand the financial</p> <p>13 statements of the – of the employer before</p> <p>14 agreeing to enter into a loan forgiveness program?</p> <p>15 A. They should – they should have a</p> <p>16 basic understanding of financial statements, yes.</p> <p>17 Q. And that's the advice that you would</p> <p>18 always give to a decision maker, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And why would you give that advice?</p> <p>21 A. Well, I think that you would want –</p> <p>22 as part of making forgivable loans or any</p> <p>23 compensation, you would want to have a basic</p> <p>24 knowledge of the financial condition of the</p> <p>25 business.</p>	<p>Page 41</p> <p>1 ALAN JOHNSON</p> <p>2 Q. Can you think of any circumstance</p> <p>3 where it would be appropriate for a decision maker</p> <p>4 to agree to forgive loans as part of an executive</p> <p>5 compensation package without having a basic</p> <p>6 knowledge of the financial condition of the</p> <p>7 employer?</p> <p>8 A. Well, I think, as I said earlier, if</p> <p>9 it's – if it's just not possible to do that, you</p> <p>10 just can't – it's chaotic enough or it's just</p> <p>11 very difficult to figure out the condition of the</p> <p>12 business, then you still have to make decisions,</p> <p>13 but you should strive to have an understanding</p> <p>14 before you make these decisions.</p> <p>15 Q. Can you think of any circumstance</p> <p>16 where a decision maker should enter into a loan</p> <p>17 forgiveness program without asking to see the</p> <p>18 financial statements of the employer?</p> <p>19 A. Well, if someone already has a good</p> <p>20 understanding, you may not need to supplement</p> <p>21 that, but if you don't have a clear understanding,</p> <p>22 you should have – you should try to obtain that.</p> <p>23 Q. Is it fair to say you would never</p> <p>24 advise a decision maker to agree to forgive loans</p> <p>25 as part of executive compensation without</p>

<p>Page 42</p> <p>1 ALAN JOHNSON</p> <p>2 understanding the entity's financial statements,</p> <p>3 including its profit and loss and its balance</p> <p>4 sheet?</p> <p>5 A. As I said earlier, you would try to</p> <p>6 have that understanding if it's possible,</p> <p>7 absolutely.</p> <p>8 Q. Okay.</p> <p>9 Under the modification agreement</p> <p>10 that's described in your report, the 2018 loans</p> <p>11 are to be forgiven upon the sale of certain assets</p> <p>12 above cost.</p> <p>13 Do I have that right?</p> <p>14 A. Yes.</p> <p>15 Q. And so is it fair to call that kind of</p> <p>16 a contingency, the forgiveness is contingent upon</p> <p>17 a future event?</p> <p>18 A. Yes.</p> <p>19 Q. And the future event here, or the</p> <p>20 "subsequent event" as we call it sometimes, is the</p> <p>21 sale of one of three assets above cost.</p> <p>22 Do I have that right?</p> <p>23 A. Yes.</p> <p>24 Q. I think you said this earlier, but</p> <p>25 just to make sure, before agreeing to provide</p>	<p>Page 43</p> <p>1 ALAN JOHNSON</p> <p>2 compensation through forgivable loans, would you</p> <p>3 advise the decision maker under this scenario to</p> <p>4 make an assessment of the likelihood that the</p> <p>5 condition subsequent would occur?</p> <p>6 A. You would want to have that basic</p> <p>7 understanding. It's difficult to forecast, but</p> <p>8 yes, you would want to look at the magnitude of</p> <p>9 the forgivable – the amount of loans being</p> <p>10 forgiven and the significance of these</p> <p>11 accomplishments along with the probability of it</p> <p>12 actually happening.</p> <p>13 So you would want at least at a high</p> <p>14 level to have some either understanding or feel</p> <p>15 for the magnitude of the loans, the significance</p> <p>16 of the accomplishments and their likelihood of it</p> <p>17 happening.</p> <p>18 Q. And if we – if we applied those</p> <p>19 thoughts to this case, would you recommend or</p> <p>20 advise the decision maker that he or she obtain</p> <p>21 information about the cost of each of the three</p> <p>22 assets that are subject to the conditions</p> <p>23 subsequent?</p> <p>24 A. Yeah, you would want to understand the</p> <p>25 significance of these transactions, the proceeds,</p>
<p>Page 44</p> <p>1 ALAN JOHNSON</p> <p>2 the – have an understanding of how significant</p> <p>3 these amounts are to the – to the company.</p> <p>4 Q. And would you also advise your client,</p> <p>5 who's the decision maker in this hypothetical,</p> <p>6 that he or she or it should obtain information</p> <p>7 about the value of those assets as of the date of</p> <p>8 the agreement?</p> <p>9 A. You should have a basic understanding</p> <p>10 of the value of these assets, where they're marked</p> <p>11 on the books, around the time you do the</p> <p>12 agreement.</p> <p>13 Q. Why do you believe that the decision</p> <p>14 maker should have at the time of the agreement</p> <p>15 information enabling him, her or it to make an</p> <p>16 assessment as to the likelihood that the condition</p> <p>17 subsequent will occur?</p> <p>18 A. Well, I think if you're trying to</p> <p>19 motivate someone or reward someone, you have to</p> <p>20 have some idea, is it likely to happen? Is it</p> <p>21 impossible? Is it certainty?</p> <p>22 Again, I think that's part of the</p> <p>23 calculus is to reward someone for achieving</p> <p>24 something that may be difficult with a significant</p> <p>25 payout but it's not impossible.</p>	<p>Page 45</p> <p>1 ALAN JOHNSON</p> <p>2 So I think as you design either loans</p> <p>3 or more commonly, comp program, you've got to</p> <p>4 assess the difficulty and importance of these</p> <p>5 things happening.</p> <p>6 Q. Can you think of any circumstances</p> <p>7 where it would be appropriate for a decision maker</p> <p>8 to enter into an agreement to forgive loans based</p> <p>9 on some future event without having an</p> <p>10 understanding of the likelihood that that future</p> <p>11 event will occur?</p> <p>12 A. Well, usually, when we do these</p> <p>13 things, there's a great deal of judgment and</p> <p>14 subjectivity in that.</p> <p>15 So I think it is not generally</p> <p>16 quantifiable, whether you use the word "gut</p> <p>17 feeling" or "impression" or the difficulty of</p> <p>18 these things happening. Often, it's – it's quite</p> <p>19 a subjective assessment, how difficult these</p> <p>20 things are, so you want to try to have an</p> <p>21 understanding, but it can be frustrating. It can</p> <p>22 be quite subjective about whether – the</p> <p>23 likelihood or the difficulty of these things</p> <p>24 happening.</p> <p>25 Q. Well, let's just say hypothetically</p>

<p>Page 46</p> <p>1 ALAN JOHNSON</p> <p>2 that I'm going to enter into an agreement that is</p> <p>3 going to permit me to – withdrawn.</p> <p>4 So let's say hypothetically I'm an</p> <p>5 employee and I've borrowed a hundred dollars from</p> <p>6 my employer, and my employer says to me, I'm going</p> <p>7 to forgive that hundred dollars if you sell any of</p> <p>8 three assets above cost. On the date that we</p> <p>9 entered into the agreement, each of the assets has</p> <p>10 cost me \$5 and each of the assets is worth \$100,</p> <p>11 so 20 times the cost on the date of the agreement.</p> <p>12 Do you think that's information that</p> <p>13 the decision maker should know before agreeing to</p> <p>14 forgive the \$100 loan?</p> <p>15 A. I think he should understand the value</p> <p>16 the asset that is – in your hypothetical, he</p> <p>17 should have an understanding of that and how</p> <p>18 significant in your hypothetical selling that</p> <p>19 would be to the business.</p> <p>20 Maybe that the proceeds of one of them</p> <p>21 is really significant in terms of the – turning</p> <p>22 the business around or providing liquidity or</p> <p>23 other types of things, he should have some idea of</p> <p>24 if one of those three assets are sold, what does</p> <p>25 that do to the firm and its future.</p>	<p>Page 47</p> <p>1 ALAN JOHNSON</p> <p>2 Q. And is it fair to say that with the</p> <p>3 information about value and cost, the assessment</p> <p>4 as to whether or not the future event is likely to</p> <p>5 occur is not purely subjective and it's not purely</p> <p>6 based on a gut feeling, is that fair, if you have</p> <p>7 that information?</p> <p>8 A. It's hard. It's a lot closer to a gut</p> <p>9 feeling, subjective than objective. But it's hard</p> <p>10 to – your ability to actually sell something,</p> <p>11 when, to who, at what price, can be quite – is</p> <p>12 often quite subjective.</p> <p>13 So you may have – depending on</p> <p>14 circumstances, you may have good information of</p> <p>15 likelihood, but oftentimes, you really don't.</p> <p>16 Q. Would you – would you always advise</p> <p>17 the decision maker under this hypothetical to try</p> <p>18 to obtain as much information as he, she, or it</p> <p>19 can on the issues of cost and value of the three</p> <p>20 assets at issue?</p> <p>21 A. I would – I would tell clients to try</p> <p>22 to understand that as best they could.</p> <p>23 Q. Can you think of any circumstance</p> <p>24 where it would be appropriate for a decision maker</p> <p>25 to enter into a loan forgiveness agreement without</p>
<p>Page 48</p> <p>1 ALAN JOHNSON</p> <p>2 even asking for that information?</p> <p>3 A. Well, in circumstances where they</p> <p>4 already thought they had a good understanding,</p> <p>5 they didn't probably need to ask, but you should</p> <p>6 try to have a good understanding.</p> <p>7 Again, as I said, the significance of</p> <p>8 these assets and whether – if they're sold, for</p> <p>9 example, what that impact would be on the</p> <p>10 business.</p> <p>11 Q. I think one of the things you've done</p> <p>12 in your report is to provide your assessment of</p> <p>13 compensation paid to comparable executives.</p> <p>14 Is that fair to describe at least a</p> <p>15 portion of your report?</p> <p>16 A. Yes.</p> <p>17 Q. Okay.</p> <p>18 In your opinion, is the amount and</p> <p>19 form of compensation paid to comparable executives</p> <p>20 relevant to a decision maker's determination of</p> <p>21 whether or not to enter into a forgiveness program</p> <p>22 as part of executive compensation?</p> <p>23 A. As I said earlier, that would be one</p> <p>24 of the things you would want to have – you would</p> <p>25 want to have a general understanding of, the pay</p>	<p>Page 49</p> <p>1 ALAN JOHNSON</p> <p>2 history and the context of the situation.</p> <p>3 Q. Okay.</p> <p>4 In fact, this is what you sell. Isn't</p> <p>5 that right, one of the things you sell?</p> <p>6 A. To make sure I understand the</p> <p>7 question, what am I selling here?</p> <p>8 Q. One of the things you sell is your</p> <p>9 knowledge, expertise and experience about how</p> <p>10 comparable executives are compensated in the</p> <p>11 financial services industry, right?</p> <p>12 A. Yes.</p> <p>13 Q. And so is it fair to say that you</p> <p>14 believe the decision maker should have an</p> <p>15 understanding as to how comparable executives are</p> <p>16 compensated before agreeing to enter into an</p> <p>17 executive loan program – loan forgiveness</p> <p>18 program?</p> <p>19 A. I think more it would be about the</p> <p>20 individual's pay history. I think how other</p> <p>21 people in the industry is probably of less</p> <p>22 importance on that narrow issue.</p> <p>23 I think you'd want to know how has</p> <p>24 Mary or Jim been paid in the past on that issue</p> <p>25 rather – I think that would be more important</p>

<p>Page 50</p> <p>1 ALAN JOHNSON</p> <p>2 than how other executives in the industry had been</p> <p>3 paid.</p> <p>4 Q. Well, let's say hypothetically that in</p> <p>5 the industry, very senior founding executives get</p> <p>6 paid on the average of \$6 million a year.</p> <p>7 A. Okay.</p> <p>8 Q. And the executive at issue has</p> <p>9 received \$6 million a year for at least, let's</p> <p>10 say, 7 years, just to say hypothetically.</p> <p>11 If a decision maker wanted to forgive</p> <p>12 loans of \$50 million, do you understand the</p> <p>13 decision maker should know, is that what other</p> <p>14 people doing this job are getting? Are they</p> <p>15 getting that kind of money?</p> <p>16 Don't you think they should know that</p> <p>17 before entering into the agreement?</p> <p>18 A. Yes, I think you would want to know</p> <p>19 the magnitude, in your example of \$50 million, how</p> <p>20 does that stack up to the compensation of the</p> <p>21 executive and how other people in the industry</p> <p>22 would have been paid?</p> <p>23 So yes, you would want to – in your</p> <p>24 hypothetical, the \$50 million, you would want to</p> <p>25 have some idea of how that – the magnitude of</p>	<p>Page 51</p> <p>1 ALAN JOHNSON</p> <p>2 that money.</p> <p>3 Q. Right.</p> <p>4 A decision maker should try to take</p> <p>5 steps to avoid overpaying. Is that fair?</p> <p>6 A. A decision maker should try to both</p> <p>7 make sure you don't under or overpay. You should</p> <p>8 try to get it right and fair, whatever that means.</p> <p>9 Q. And one of the ways to get it right or</p> <p>10 fair is to try to have an understanding as to how</p> <p>11 comparable executives are compensated in the same</p> <p>12 industry. Is that fair?</p> <p>13 A. That's one of the factors you would</p> <p>14 want to consider, absolutely.</p> <p>15 Q. And you would recommend and advise</p> <p>16 your decision makers that they should attempt to</p> <p>17 gain an understanding of how comparable executives</p> <p>18 are paid before entering into a loan forgiveness</p> <p>19 program. Is that fair?</p> <p>20 A. They should try to be – whether they</p> <p>21 have it immediately or they should try to have an</p> <p>22 understanding – if they don't already, they</p> <p>23 should try to have an understanding how does this</p> <p>24 in your hypothetical \$50 million relate to, not</p> <p>25 only the executive, but how other people are paid.</p>
<p>Page 52</p> <p>1 ALAN JOHNSON</p> <p>2 Q. Okay. Let's say hypothetically the</p> <p>3 decision maker has no prior knowledge as to how</p> <p>4 comparable executives are paid in the industry,</p> <p>5 would you recommend that such a decision maker</p> <p>6 hire somebody like yourself?</p> <p>7 A. They could hire someone like us or</p> <p>8 they could talk to their attorneys or they could</p> <p>9 do their own research or talk to the HR</p> <p>10 department. You could get it from many sources.</p> <p>11 But if someone were to ask me out of</p> <p>12 the blue, I would say, yeah, you should have an</p> <p>13 understanding, how does – how does the amount</p> <p>14 you're going to forgive stack up to the industry</p> <p>15 you're in? Is it a small amount, large amount?</p> <p>16 You should have some idea of the</p> <p>17 relative magnitude of the amount in question.</p> <p>18 Q. Is it fair to say that you would never</p> <p>19 advise a decision maker who has no knowledge of</p> <p>20 how comparable executives are paid to enter into a</p> <p>21 loan forgiveness program without at least</p> <p>22 attempting to understand how the – how the</p> <p>23 competition pays their employees?</p> <p>24 A. Well, the caveat of – the answer –</p> <p>25 the broad answer would be, yes, but the caveat</p>	<p>Page 53</p> <p>1 ALAN JOHNSON</p> <p>2 would be how significant the loans were.</p> <p>3 If the loans were relatively small, it</p> <p>4 probably wouldn't be required. The larger the</p> <p>5 loans, generally, you would say – you would want</p> <p>6 to have a better understanding of pay practices in</p> <p>7 the industry.</p> <p>8 Q. Okay.</p> <p>9 Let's say hypothetically the people</p> <p>10 who are involved in the discussions concerning the</p> <p>11 forgiveness of the loans are the CEO and an</p> <p>12 outside director. Okay?</p> <p>13 Are you with me so far?</p> <p>14 A. Yes. I'm sorry.</p> <p>15 Q. And let's – let's assume that the</p> <p>16 outside director has no experience in the</p> <p>17 financial services industry. Let's assume that</p> <p>18 the outside director has never worked for the</p> <p>19 company. Let's assume that the outside director</p> <p>20 doesn't have access to the company's financial</p> <p>21 statements. Okay?</p> <p>22 With that hypothetical, would you</p> <p>23 advise the decision maker to utilize a source of</p> <p>24 information other than the CEO himself before</p> <p>25 entering into the agreement?</p>



<p>Page 54</p> <p>1 ALAN JOHNSON</p> <p>2 A. In your hypothetical, as a director</p> <p>3 with fiduciary duties, you should try to have an</p> <p>4 understanding of the magnitude of what you're</p> <p>5 being asked to do, and you should try to have</p> <p>6 independent verification in one way or the other,</p> <p>7 is what being proposed, whether it be a loan or</p> <p>8 any other business decision, is this reasonable?</p> <p>9 You should try to have an understanding, yes.</p> <p>10 Q. Would you ever advise the decision</p> <p>11 maker in the circumstances that I've described in</p> <p>12 this hypothetical to rely solely on the CEO as the</p> <p>13 source of all information that would be considered</p> <p>14 before entering into the forgiveness program?</p> <p>15 A. Well, that would be very unusual. I</p> <p>16 think it really would depend on the circumstances.</p> <p>17 If the circumstance – I can have</p> <p>18 other hypotheticals where it – there could be a</p> <p>19 chaotic situation. It could be the – it was an</p> <p>20 extremist situation where you need to make a rapid</p> <p>21 decision and so forth.</p> <p>22 But in more typical situations, yes,</p> <p>23 you should try to get independent advice from, you</p> <p>24 know, others or your own research to found it. If</p> <p>25 you have to make an immediate decision, you know,</p>	<p>Page 55</p> <p>1 ALAN JOHNSON</p> <p>2 you got to do what you got to do.</p> <p>3 Q. Let's take it out of the hypothetical.</p> <p>4 Have you ever advised a client to</p> <p>5 enter into a loan forgiveness program without</p> <p>6 having obtained any information from any source</p> <p>7 other than the executive or the employee who's the</p> <p>8 beneficiary under the agreement?</p> <p>9 A. I have not advised a client that way,</p> <p>10 no.</p> <p>11 Q. Would you ever advise a client to do</p> <p>12 that?</p> <p>13 A. Again, assuming it was a significant</p> <p>14 amount of money, no, I would not advise a client</p> <p>15 to do that.</p> <p>16 Q. Can you think of any – I guess you've</p> <p>17 already described if it's an extremist or a</p> <p>18 chaotic situation.</p> <p>19 Are those the only two situations that</p> <p>20 you can conjure up in your head where it might be</p> <p>21 appropriate for a decision maker to rely solely on</p> <p>22 the beneficiary of the agreement before entering</p> <p>23 into the loan forgiveness program?</p> <p>24 A. I think with the caveat I mentioned</p> <p>25 earlier, if the amounts were small, you know, not</p>
<p>Page 56</p> <p>1 ALAN JOHNSON</p> <p>2 particularly meaningful, but if it's a meaningful</p> <p>3 amount, you would try to get information.</p> <p>4 Q. What if the amount constituted –</p> <p>5 withdrawn.</p> <p>6 Is it your understanding that the</p> <p>7 modification agreement pursuant to which certain</p> <p>8 loans will be forgiven in the future upon the</p> <p>9 occurrence of certain conditions subsequent, is it</p> <p>10 your understanding that that agreement applies not</p> <p>11 only to loans that were given to Mr. Dondero, but</p> <p>12 to loans to affiliated companies that Mr. Dondero</p> <p>13 either directly or indirectly owns and controls?</p> <p>14 A. My understanding from Mr. Dondero was</p> <p>15 all the loans. That came from him.</p> <p>16 Q. And how do you define "from him"?</p> <p>17 A. In the conversation – the</p> <p>18 conversations I had with him.</p> <p>19 Q. I just want to know, is it just the</p> <p>20 loans that Highland gave to him as an individual</p> <p>21 human being or does it also cover loans that</p> <p>22 Highland made to entities that are directly or</p> <p>23 indirectly owned or controlled by him?</p> <p>24 A. It was my understanding from him that</p> <p>25 it was all of the loans.</p>	<p>Page 57</p> <p>1 ALAN JOHNSON</p> <p>2 Q. So do you believe that the decision</p> <p>3 maker should have a knowledge and understanding</p> <p>4 about all of the loans before entering into a</p> <p>5 forgiveness program?</p> <p>6 A. The decision maker should know the</p> <p>7 magnitude of the loans to be forgiven.</p> <p>8 Q. Do you think the decision maker should</p> <p>9 be familiar with the terms of each of the loans</p> <p>10 that are subject to the forgiveness agreement?</p> <p>11 A. I think the decision maker should have</p> <p>12 a general understanding of the terms of the loans,</p> <p>13 yes.</p> <p>14 Q. Do you think the decision maker should</p> <p>15 have an understanding as to why the loans were</p> <p>16 originally obtained?</p> <p>17 A. I think that's – it would be ideal to</p> <p>18 do that. I think it's probably less importance.</p> <p>19 Q. Would you advise the decision maker to</p> <p>20 obtain copies of the promissory notes?</p> <p>21 A. I would want the decision maker to be</p> <p>22 generally familiar with the loans. I don't – I</p> <p>23 don't know if they necessarily have to read each</p> <p>24 of the promissory notes, but I think they should</p> <p>25 have a general familiarity, what the loans are,</p>

<p>Page 58</p> <p>1 ALAN JOHNSON</p> <p>2 the magnitudes, the broad terms, the interest</p> <p>3 rates and the basic features.</p> <p>4 Q. And if the decision maker weren't a</p> <p>5 sophisticated party, would you advise the decision</p> <p>6 maker to obtain advice concerning the nature,</p> <p>7 extent and structure of the loans that were under</p> <p>8 consideration for forgiveness?</p> <p>9 A. I think the decision maker should have</p> <p>10 an understanding of the loan – what they're</p> <p>11 forgiving, what the terms or – you know, you</p> <p>12 should have an understanding of the structure of</p> <p>13 the loans you're forgiving.</p> <p>14 Q. Could you contemplate any situation</p> <p>15 where a decision maker should enter into a</p> <p>16 forgiveness of loans without having an</p> <p>17 understanding of the scope and structure of the</p> <p>18 loans themselves?</p> <p>19 A. No. I think – I think – as I said,</p> <p>20 I think the decision maker should have a general</p> <p>21 understanding of the loans, the amounts, the terms</p> <p>22 at least – at least at reasonably high level.</p> <p>23 Q. Would you always advise your client to</p> <p>24 understand the nature and extent of each of the</p> <p>25 loans that was under consideration for forgiveness</p>	<p>Page 59</p> <p>1 ALAN JOHNSON</p> <p>2 before actually agreeing to forgive those loans?</p> <p>3 A. If there are a lot of loans, I – it</p> <p>4 may not be practical.</p> <p>5 I think you'd want to have a general</p> <p>6 idea of the term, the amount, the interest rates.</p> <p>7 The exact provisions of each loan is probably less</p> <p>8 important. To have some understanding of how much</p> <p>9 is being at stake, when would they in general have</p> <p>10 been paid, what the interest rate would be.</p> <p>11 I think the ins and outs of each loan</p> <p>12 would probably be of less importance.</p> <p>13 Q. Do you think it would be important for</p> <p>14 the decision maker to know, let's just say</p> <p>15 hypothetically, as to whether the loans under</p> <p>16 consideration were demand loans or whether they</p> <p>17 were 30-year term notes?</p> <p>18 A. Yeah, I think you would want to know</p> <p>19 that. You would want to know – that would be one</p> <p>20 of the things you would want to know.</p> <p>21 Q. And why would you want to know that?</p> <p>22 A. I think if you're trying to design a</p> <p>23 plan, you'd want to have some idea of the urgency</p> <p>24 of the – of the loans.</p> <p>25 You mentioned a 30-year term, it</p>
<p>Page 60</p> <p>1 ALAN JOHNSON</p> <p>2 perhaps is less urgent than a demand note, so I</p> <p>3 think if you're trying to incent someone to</p> <p>4 achieve something, you want to have some idea of</p> <p>5 the urgency of these loans that are outstanding.</p> <p>6 Q. Can you think of any circumstance</p> <p>7 where it would be appropriate for a decision maker</p> <p>8 to agree to forgive loans without having an</p> <p>9 understanding as to the number, value and</p> <p>10 structure of the loans that are to be forgiven?</p> <p>11 A. The number of loans is probably of</p> <p>12 less importance, as I said earlier. I think you'd</p> <p>13 want to know the rough magnitude of what we're</p> <p>14 forgiving, and I think you would want to know the</p> <p>15 basic structure of the loans.</p> <p>16 Q. I appreciate that, but can you think</p> <p>17 of any circumstance where the decision maker</p> <p>18 should agree to forgive loans without knowing the</p> <p>19 structure and aggregate value the loans being</p> <p>20 forgiven?</p> <p>21 A. No. I think – I think the decision</p> <p>22 maker should have a general understanding of the</p> <p>23 dollar amounts and the structure of the loans to</p> <p>24 be forgiven.</p> <p>25 Q. And you would never advise a client to</p>	<p>Page 61</p> <p>1 ALAN JOHNSON</p> <p>2 forgive loans without knowing the dollar amount</p> <p>3 and the structure of the loans themselves,</p> <p>4 correct?</p> <p>5 A. That would not be my advice, no.</p> <p>6 Q. Okay.</p> <p>7 Do you believe that a decision maker</p> <p>8 who's considering entering into a loan forgiveness</p> <p>9 program as part of executive compensation has a</p> <p>10 duty to try to negotiate the best terms possible</p> <p>11 for the company?</p> <p>12 A. I think the decision maker has to have</p> <p>13 reasonable terms and a fair agreement. I don't</p> <p>14 think they have an obligation to necessarily</p> <p>15 strike the best possible deal. They've got to</p> <p>16 balance a number of factors, but the deal should</p> <p>17 clearly be fair to the company.</p> <p>18 Q. And why do you believe that a decision</p> <p>19 maker should make sure that the agreement is fair</p> <p>20 to the company before entering into it?</p> <p>21 A. Well, I think the – the decision</p> <p>22 maker has a responsibility to be fair to the</p> <p>23 shareholders and the other parties at the company,</p> <p>24 and the agreement should be fair to – to the</p> <p>25 company – the interest of the company.</p>

<p>Page 62</p> <p>1 ALAN JOHNSON</p> <p>2 If they're in the position of making</p> <p>3 that decision and they're representing the</p> <p>4 company, the decision should be fair.</p> <p>5 Q. And how – how would you advise a</p> <p>6 decision maker to make sure that the agreement was</p> <p>7 fair before he, she, or it entered into it?</p> <p>8 A. Well, if we're talking about loans, as</p> <p>9 I said earlier, you want to know the rough</p> <p>10 magnitude of the loans and the terms. You'd want</p> <p>11 to know the achievement of these goals, how</p> <p>12 significant are they for the success of the</p> <p>13 company, and try to balance that, and the</p> <p>14 probabilities and other things.</p> <p>15 But you'd want to balance that in a</p> <p>16 fair way where you felt that the – if it's a</p> <p>17 loan, the forgiveness of these loans is – is</p> <p>18 fairly rewarded by the achievement of these goals.</p> <p>19 Q. And so in order to assess the</p> <p>20 fairness, you testified earlier that you would</p> <p>21 always advise the decision maker to the extent</p> <p>22 possible to obtain information concerning the</p> <p>23 executive's compensation history, correct?</p> <p>24 A. You would want to know that if they</p> <p>25 didn't know it already. You would want to have</p>	<p>Page 63</p> <p>1 ALAN JOHNSON</p> <p>2 them have some idea of the individual's pay</p> <p>3 history. That would be one of the things you'd</p> <p>4 want to know.</p> <p>5 Q. And in order to assess the fairness of</p> <p>6 the transaction before entering into it, you would</p> <p>7 always recommend to the extent possible that the</p> <p>8 decision maker understand the financial condition</p> <p>9 of the employer, correct?</p> <p>10 A. You would want the decision maker to</p> <p>11 understand, as best they could in the</p> <p>12 circumstances, the condition, you know, of the</p> <p>13 company at that time.</p> <p>14 Q. And in order to assess the fairness of</p> <p>15 the transaction before you enter into it, you</p> <p>16 would always advise the decision maker to the</p> <p>17 extent possible to obtain and understand the</p> <p>18 employer's financial statements. Is that fair?</p> <p>19 A. As part of that, if they didn't</p> <p>20 already have an understanding – that's really</p> <p>21 part of the financial condition of the company –</p> <p>22 you'd want them to have a general understanding of</p> <p>23 the financial position of the company, you know,</p> <p>24 when the loan agreement was made.</p> <p>25 Q. And in order to assess the fairness of</p>
<p>Page 64</p> <p>1 ALAN JOHNSON</p> <p>2 the transaction before entering into it – give me</p> <p>3 one second, please. Sorry.</p> <p>4 Before entering the – in order to</p> <p>5 assess the transaction – withdrawn.</p> <p>6 In order to assess the fairness of a</p> <p>7 transaction before entering into it, you would</p> <p>8 always advise the decision maker to obtain</p> <p>9 information so that he, she, or it, could assess</p> <p>10 the likelihood of any future, subsequent events</p> <p>11 for which the forgiveness is contingent. Is that</p> <p>12 fair?</p> <p>13 A. The best you can, you want to at least</p> <p>14 have an impression of the difficulty or likelihood</p> <p>15 of these events being achieved.</p> <p>16 As I said earlier, that often is quite</p> <p>17 subjective. You have an impression, but you at</p> <p>18 least want to have some impression as best you can</p> <p>19 of the likelihood and importance of these things</p> <p>20 happening.</p> <p>21 Q. And – and in order to assess the</p> <p>22 fairness of the transaction before entering into</p> <p>23 it, you would always recommend that the decision</p> <p>24 maker seek and obtain as much information as</p> <p>25 possible about how comparable executives are paid.</p>	<p>Page 65</p> <p>1 ALAN JOHNSON</p> <p>2 Is that fair?</p> <p>3 A. As part of making this, I think you</p> <p>4 would want to have some idea of the magnitude of</p> <p>5 the loan being forgiven and how does that stack up</p> <p>6 with the pay of other people in the industry, the</p> <p>7 context of those decisions.</p> <p>8 Q. And in order to determine the fairness</p> <p>9 of the loan before – withdrawn.</p> <p>10 In order to determine the fairness of</p> <p>11 a forgiveness agreement before entering into it,</p> <p>12 you would always advise the decision maker to have</p> <p>13 at least an understanding as to the aggregate</p> <p>14 value and the structure of the loans that are to</p> <p>15 be forgiven, correct?</p> <p>16 A. Yes, you would want to have that</p> <p>17 knowledge.</p> <p>18 Q. Okay.</p> <p>19 So let's go back to the hypothetical</p> <p>20 where you have the CEO and an outside director</p> <p>21 who's not familiar with the industry and doesn't</p> <p>22 have access to financial statements or any</p> <p>23 information about comparable executives.</p> <p>24 In that hypothetical, if the executive</p> <p>25 were to go to the outside director and make a</p>

<p>Page 66</p> <p>1 ALAN JOHNSON</p> <p>2 proposal regarding loan forgiveness, would you</p> <p>3 advise that decision maker to try to negotiate</p> <p>4 with the executive?</p> <p>5 A. Well, it depends on what the terms are</p> <p>6 being proposed. It may on its – its face be a</p> <p>7 fair deal and you don't need to negotiate. If</p> <p>8 the – if the term – if the director believes the</p> <p>9 terms are not as being proposed fair, yes, they</p> <p>10 should negotiate and try to get an agreement that</p> <p>11 is at least fair from the standpoint of the</p> <p>12 company.</p> <p>13 Q. Well, in my hypothetical, assume that</p> <p>14 the decision maker, the director, doesn't have any</p> <p>15 information concerning the executive's</p> <p>16 compensation history, doesn't have an</p> <p>17 understanding of the entity's financial condition,</p> <p>18 hasn't obtained or reviewed the entity's financial</p> <p>19 statements, hasn't spoken to anybody other than</p> <p>20 the CEO himself, has no experience in the</p> <p>21 industry, has no expertise in the area of</p> <p>22 executive compensation, would you advise that</p> <p>23 particular decision maker to enter into the</p> <p>24 agreement that's first proposed by the CEO without</p> <p>25 negotiation?</p>	<p>Page 67</p> <p>1 ALAN JOHNSON</p> <p>2 A. Well, I think even before negotiation,</p> <p>3 in your hypothetical, someone who knows nothing</p> <p>4 should get informed before they make any decision.</p> <p>5 So that probably comes first.</p> <p>6 You know, once they got better</p> <p>7 informed, they could decide on whether they need</p> <p>8 to negotiate or the offer on its face is fair, but</p> <p>9 if they know nothing, they should get informed</p> <p>10 before they agree to any decision.</p> <p>11 Q. Based on your knowledge and experience</p> <p>12 and expertise in the industry, can you conjure up</p> <p>13 a scenario where a decision maker who knows</p> <p>14 nothing but nevertheless enters into a forgiveness</p> <p>15 program has fulfilled his, her, or its duties to</p> <p>16 the company?</p> <p>17 MR. AIGEN: Objection, form.</p> <p>18 A. I'm sorry, could you repeat the</p> <p>19 question? I lost my train of thought.</p> <p>20 Q. Sure.</p> <p>21 Let's assume the decision maker knows</p> <p>22 nothing. In your opinion, can that decision maker</p> <p>23 ever fulfill his, her, or its duty by entering</p> <p>24 into a loan forgiveness program with the CEO?</p> <p>25 MR. AIGEN: Objection, form.</p>
<p>Page 68</p> <p>1 ALAN JOHNSON</p> <p>2 A. Well, I think the director could get</p> <p>3 lucky where the proposal was imminently fair and</p> <p>4 you – you put it in place, but certainly, you're</p> <p>5 at risk of agreeing to something that's not fair.</p> <p>6 But a director or a company could get lucky in</p> <p>7 that the proposal was – was fair on its face,</p> <p>8 so...</p> <p>9 Q. Would you ever advise a client to –</p> <p>10 who was a decision maker who knew nothing to enter</p> <p>11 into the agreement and hope that he, she, or it</p> <p>12 got lucky?</p> <p>13 A. I do not advise clients to try to get</p> <p>14 lucky, no.</p> <p>15 Q. Have you ever heard of a decision</p> <p>16 maker – withdrawn.</p> <p>17 In your 30 years' experience, have you</p> <p>18 ever heard of a decision maker entering into a</p> <p>19 loan forgiveness program with no knowledge of the</p> <p>20 executive's employment history, the employer's</p> <p>21 financial condition, without an understanding of</p> <p>22 the financial statements, with no knowledge of</p> <p>23 comparable executives, have you ever heard of</p> <p>24 anybody like that ever entering into a loan</p> <p>25 forgiveness program?</p>	<p>Page 69</p> <p>1 ALAN JOHNSON</p> <p>2 A. I don't recall that – that situation,</p> <p>3 no.</p> <p>4 Q. You'd agree with me it's not common in</p> <p>5 the industry, is it?</p> <p>6 A. The facts that you've laid out would</p> <p>7 not be common, no.</p> <p>8 Q. If you were advising a decision maker</p> <p>9 who was contemplating entering into a loan</p> <p>10 forgiveness program as part of executive</p> <p>11 compensation, would you advise that decision maker</p> <p>12 to make sure that the agreement is in writing?</p> <p>13 A. Yes. Yes, I would.</p> <p>14 Q. And why would you do that?</p> <p>15 A. We – you want there to be no</p> <p>16 misunderstandings. I think many of these</p> <p>17 agreements are complicated and you – people's</p> <p>18 memory are fallible, so we often advise clients to</p> <p>19 put many agreements in writing just so there's no</p> <p>20 misunderstandings, everybody understands what the</p> <p>21 terms are.</p> <p>22 Q. Can you think of any exception to the</p> <p>23 advice you would give with respect to making sure</p> <p>24 that forgiveness agreements are in writing?</p> <p>25 Can you think of any scenario where</p>

<p>Page 70</p> <p>1 ALAN JOHNSON</p> <p>2 you would advise the decision maker, don't put</p> <p>3 that in writing?</p> <p>4 A. No. No, we wouldn't advise that.</p> <p>5 Although unfortunately, many of our clients don't</p> <p>6 put things in writing, but that would not be our</p> <p>7 advice.</p> <p>8 Q. How about a hypothetical where the</p> <p>9 agreement to forgive loans encompassed more than a</p> <p>10 dozen loans, would you also recommend that there</p> <p>11 be a written record of the identity of the loans</p> <p>12 that were the subject of the agreement?</p> <p>13 A. If there were a dozen meaningful</p> <p>14 loans, we would recommend that you have a catalog</p> <p>15 of what the loans are talking about, absolutely.</p> <p>16 Q. Can you think of any scenario where it</p> <p>17 would be appropriate to enter into an agreement</p> <p>18 for the forgiveness of a dozen or more loans</p> <p>19 without having any written record of it?</p> <p>20 A. As I said earlier, we would recommend</p> <p>21 that all of these agreements be put in writing.</p> <p>22 Q. As an expert on executive</p> <p>23 compensation, have you ever advised the decision</p> <p>24 maker to enter into an oral agreement concerning</p> <p>25 forgivable loans?</p>	<p>Page 71</p> <p>1 ALAN JOHNSON</p> <p>2 A. I – I would never – we always – I</p> <p>3 would always want to have it in writing.</p> <p>4 Q. So let's go back to my hypothetical</p> <p>5 where you have an agreement between a CEO and an</p> <p>6 outside director. If you were advising the</p> <p>7 outside director, would you tell him or her that</p> <p>8 your advice is to make sure that somebody in the</p> <p>9 organization other than the CEO knows about the</p> <p>10 terms in existence of the loan forgiveness</p> <p>11 program?</p> <p>12 A. I would tell the outside director that</p> <p>13 other people should be informed.</p> <p>14 Other directors, the – yes, I would</p> <p>15 want other people – I would – if I were asked, I</p> <p>16 would – I would suggest or recommend that other</p> <p>17 people be informed.</p> <p>18 Q. And why would you make – why would</p> <p>19 you give that advice?</p> <p>20 A. You would want – at just an</p> <p>21 operational level, you would want to make sure</p> <p>22 your finance department was aware that certain</p> <p>23 payments might stop or in preparing the financial</p> <p>24 statements or – or other just operational issues,</p> <p>25 so, again, there's no misunderstanding as you put</p>
<p>Page 72</p> <p>1 ALAN JOHNSON</p> <p>2 your financial statements together or just</p> <p>3 operationalize these loans.</p> <p>4 Q. In your – in your experience, do</p> <p>5 companies that enter into loan forgiveness</p> <p>6 programs customarily include reference to the</p> <p>7 agreements in their financial statements or in</p> <p>8 their books and records?</p> <p>9 A. It's a mixed practice. Some people do</p> <p>10 and some people don't, particularly private firms.</p> <p>11 Q. Have you ever heard of a situation</p> <p>12 where the decision maker and the executive enter</p> <p>13 into a loan forgiveness program and never tell</p> <p>14 anybody about the terms or existence of the</p> <p>15 program until after litigation is commenced?</p> <p>16 A. I don't know if I can – sitting here</p> <p>17 if I can recall a loan forgiveness program.</p> <p>18 I can – there's certainly other</p> <p>19 facets of compensation where things weren't</p> <p>20 documented and there's all kinds of disputes, but</p> <p>21 I can't sitting here think of another loan</p> <p>22 forgiveness program.</p> <p>23 Q. Okay. I appreciate that. My question</p> <p>24 is just a little bit different.</p> <p>25 Can you recall any instance in your</p>	<p>Page 73</p> <p>1 ALAN JOHNSON</p> <p>2 career where you've heard about a decision maker</p> <p>3 who entered into a loan forgiveness program with</p> <p>4 an employee but never told anybody in the world</p> <p>5 about that until after litigation was commenced?</p> <p>6 A. I can't recall any sitting here.</p> <p>7 Q. Okay. And you would never recommend</p> <p>8 that a decision maker keep to him or herself the</p> <p>9 entry into any agreement concerning the</p> <p>10 forgiveness of loans?</p> <p>11 A. I think, again, we would – I would</p> <p>12 always recommend things be in writing with the</p> <p>13 caveat if it was a small or trivial amount,</p> <p>14 perhaps it wasn't needed.</p> <p>15 Q. In your opinion are the loans at issue</p> <p>16 in this case small or trivial?</p> <p>17 A. No.</p> <p>18 MR. MORRIS: Okay. We've been going</p> <p>19 an hour and a half. I really appreciate</p> <p>20 your patience, sir.</p> <p>21 Can we take just a 10-minute break and</p> <p>22 come back at 10:40 eastern? It's actually a</p> <p>23 13-minute break.</p> <p>24 THE WITNESS: Okay.</p> <p>25 MR. MORRIS: Okay. Thank you very</p>



<p>Page 74</p> <p>1 ALAN JOHNSON</p> <p>2 much.</p> <p>3 (Recess taken from 10:27 a.m. until</p> <p>4 10:40 a.m.)</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. Mr. Johnson, did you speak with</p> <p>7 anybody during the break about your testimony</p> <p>8 today?</p> <p>9 A. No.</p> <p>10 Q. Did you communicate with anybody in</p> <p>11 writing about your testimony today during the</p> <p>12 break?</p> <p>13 A. No.</p> <p>14 Q. Do you recall when you were –</p> <p>15 withdrawn. I apologize.</p> <p>16 Are you – were you engaged in this</p> <p>17 case or was your firm engaged in this case or is</p> <p>18 it one in the same?</p> <p>19 I just want to make sure I get it</p> <p>20 right.</p> <p>21 A. I was engaged as an expert witness as</p> <p>22 part of my firm.</p> <p>23 Q. Okay.</p> <p>24 Do you recall when you were engaged in</p> <p>25 this case?</p>	<p>Page 75</p> <p>1 ALAN JOHNSON</p> <p>2 A. Maybe March or April of this year.</p> <p>3 Q. Do you have an engagement letter?</p> <p>4 A. We did, yes.</p> <p>5 Q. Okay.</p> <p>6 And would that engagement letter</p> <p>7 reflect the date upon which you were engaged in</p> <p>8 this matter?</p> <p>9 A. Yes, it would.</p> <p>10 Q. Okay.</p> <p>11 Did you ever review any of the</p> <p>12 pleadings in this case, any of the complaints?</p> <p>13 A. I just don't – I don't recall.</p> <p>14 Q. Did you have any familiarity with</p> <p>15 Highland Capital Management, L.P. or any of its</p> <p>16 affiliates prior to your engagement in this case?</p> <p>17 A. I don't believe so.</p> <p>18 Q. Did you have any familiarity with</p> <p>19 James Dondero prior to being retained in this</p> <p>20 case?</p> <p>21 A. I don't believe so.</p> <p>22 Q. I think you said that you were</p> <p>23 retained by the Stinson firm.</p> <p>24 Do I have that right?</p> <p>25 A. Yes.</p>
<p>Page 76</p> <p>1 ALAN JOHNSON</p> <p>2 Q. And had you done work for the Stinson</p> <p>3 firm prior to this case?</p> <p>4 A. I don't believe so.</p> <p>5 Q. You have been retained by my firm</p> <p>6 before. Is that right?</p> <p>7 A. Yes.</p> <p>8 Q. Is that just one occasion?</p> <p>9 A. No, several times.</p> <p>10 Q. Oh, okay. Well, it's nice to meet you</p> <p>11 because we've never worked together, right, just</p> <p>12 for the record?</p> <p>13 A. Yes.</p> <p>14 Q. All right. We're going to put your</p> <p>15 expert report up on the screen. I forgot what</p> <p>16 number we have premarked it, but let's take a look</p> <p>17 at it.</p> <p>18 MS. CANTY: Sixty-two, John.</p> <p>19 MR. MORRIS: Thank you very much.</p> <p>20 (Exhibit 62, expert report, was marked</p> <p>21 for identification at this time.)</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. So your report, Mr. Johnson, is up on</p> <p>24 the screen. It's been premarked as Exhibit 62 for</p> <p>25 our purposes.</p>	<p>Page 77</p> <p>1 ALAN JOHNSON</p> <p>2 MR. MORRIS: And can we go to page 16,</p> <p>3 please.</p> <p>4 Q. And if we go to the bottom of the</p> <p>5 page, is that your signature, sir?</p> <p>6 A. Yes.</p> <p>7 Q. And did you sign this on or about</p> <p>8 May 28, 2021?</p> <p>9 A. Yes.</p> <p>10 Q. You haven't amended this report since</p> <p>11 May. Is that right?</p> <p>12 A. That's right.</p> <p>13 Q. Okay.</p> <p>14 And there's no modification to any of</p> <p>15 your opinions that are set forth in this report,</p> <p>16 correct?</p> <p>17 A. That's correct.</p> <p>18 Q. Okay.</p> <p>19 MR. MORRIS: Can we go to page 25,</p> <p>20 please.</p> <p>21 Q. And do you see that there's a list</p> <p>22 here of documents reviewed?</p> <p>23 A. Yes.</p> <p>24 Q. And I'm embarrassed to say, but I've</p> <p>25 actually looked at all the documents.</p>

<p>Page 78</p> <p>1 ALAN JOHNSON</p> <p>2 Is it – is it fair to characterize</p> <p>3 the documents that you reviewed as either</p> <p>4 tax-related information, financial statements from</p> <p>5 NexPoint or Highland Capital Management Fund</p> <p>6 Advisors or certain agreements between and among</p> <p>7 the parties?</p> <p>8 A. I think it's certainly that. There</p> <p>9 may be other things, but certainly, those were</p> <p>10 included in there, yes.</p> <p>11 Q. Can you identify any other type of</p> <p>12 document that you recall reviewing prior to the</p> <p>13 preparation of this report other than tax-related</p> <p>14 information, financial statements for NexPoint and</p> <p>15 HCMFA and certain agreements between and among the</p> <p>16 parties?</p> <p>17 A. You had asked about the pleadings, and</p> <p>18 I just don't recall, but with that – with that</p> <p>19 caveat, I think that's accurate.</p> <p>20 Q. Okay.</p> <p>21 And to the best of your knowledge,</p> <p>22 does this page identify every document that you</p> <p>23 were provided with prior to the preparation of</p> <p>24 your report?</p> <p>25 A. Yes, I believe so.</p>	<p>Page 79</p> <p>1 ALAN JOHNSON</p> <p>2 Q. Okay.</p> <p>3 You're not aware of any documents that</p> <p>4 you received that aren't disclosed on this page,</p> <p>5 right?</p> <p>6 A. Not that I'm aware of.</p> <p>7 Q. Okay.</p> <p>8 Has anybody provided you with any</p> <p>9 documents between May 28th and today that relate</p> <p>10 to the subject matter of your report?</p> <p>11 A. I'm sorry, I didn't catch the last</p> <p>12 bit.</p> <p>13 Q. Has anyone provided you any documents</p> <p>14 between May 28th, 2021 and today that concern or</p> <p>15 relate to any aspect of your report?</p> <p>16 A. I'm not sure how to answer the</p> <p>17 question. I received other documents, so I'm not</p> <p>18 sure what you're trying to get at.</p> <p>19 Q. What other documents do you recall</p> <p>20 receiving since May 28th, 2021 that concern your</p> <p>21 report.</p> <p>22 A. I think I mentioned I reviewed some of</p> <p>23 the loan documentation on the loans. I've seen</p> <p>24 the financial statements for Highland Capital</p> <p>25 Management. I've – those two I recall.</p>
<p>Page 80</p> <p>1 ALAN JOHNSON</p> <p>2 Q. Okay.</p> <p>3 Do you remember for what years the</p> <p>4 financial statements were for Highland?</p> <p>5 A. If I recall, they were 2014, I</p> <p>6 believe, through – it's either '14 or '15 through</p> <p>7 '19, I believe.</p> <p>8 Q. And reviewing these documents didn't</p> <p>9 cause you to amend or modify your opinions in any</p> <p>10 way, correct?</p> <p>11 A. No.</p> <p>12 Q. Okay. I'm just going to ask you a</p> <p>13 series of questions to see if you're familiar with</p> <p>14 any of the following categories of documents.</p> <p>15 You mentioned that you saw some loan</p> <p>16 documents.</p> <p>17 Do I have that right?</p> <p>18 A. Yes.</p> <p>19 Q. Would the loan documents that you have</p> <p>20 in mind be promissory notes?</p> <p>21 A. I'm not sure what the definition of a</p> <p>22 "promissory note" is.</p> <p>23 Q. Are you familiar with promissory notes</p> <p>24 generally?</p> <p>25 A. I'm familiar with notes, but I'm not</p>	<p>Page 81</p> <p>1 ALAN JOHNSON</p> <p>2 sure of the legal meaning of what a promissory</p> <p>3 note is.</p> <p>4 Q. I think you mentioned that certain of</p> <p>5 the loan documents that you saw referenced what</p> <p>6 I'll characterize as a roll-up of existing loans.</p> <p>7 Do I have that right?</p> <p>8 A. I saw that described, yes.</p> <p>9 Q. And was that – was there a schedule</p> <p>10 to the document entitled, I think, either</p> <p>11 Exhibit A or Schedule A that listed various loans,</p> <p>12 including the principal amount and the interest</p> <p>13 that was outstanding as of the date of the</p> <p>14 document?</p> <p>15 A. I've seen schedules like that, yes.</p> <p>16 Q. Okay.</p> <p>17 Other than – other than the documents</p> <p>18 with the schedules that – that you've just</p> <p>19 acknowledged seeing, do you recall seeing any</p> <p>20 other loan documents prior to today's deposition?</p> <p>21 A. If it's not on the list that we're</p> <p>22 looking at, I don't recall anything else.</p> <p>23 Q. Do you know where you got these</p> <p>24 documents – withdrawn.</p> <p>25 Who gave you these documents?</p>

<p>Page 82</p> <p>1 ALAN JOHNSON</p> <p>2 A. They're from the Stinson law firm.</p> <p>3 Q. And do you recall when the Stinson law</p> <p>4 firm gave you these documents?</p> <p>5 A. And "these documents" refer to prior</p> <p>6 to writing the report or recently?</p> <p>7 Q. I apologize. Great question.</p> <p>8 I'm only asking about the loan</p> <p>9 documents and the financial statements that you</p> <p>10 have testified to having received after the date</p> <p>11 of this report.</p> <p>12 A. I've received it from the law firm</p> <p>13 within the last week.</p> <p>14 Q. Did you – did you ask them for</p> <p>15 documents or did they give them to you of their</p> <p>16 own accord?</p> <p>17 A. I had asked them from documents prior</p> <p>18 to writing my report, and then I think we asked</p> <p>19 for documents getting ready for this deposition.</p> <p>20 Q. And what they gave you in response to</p> <p>21 your request were the loan documents with the</p> <p>22 schedule listing certain principal and interest</p> <p>23 due on the loans as well as, to the best of your</p> <p>24 recollection, financial statements for HCM, L.P.</p> <p>25 for around 2014 or '15 through around 2019. Is</p>	<p>Page 83</p> <p>1 ALAN JOHNSON</p> <p>2 that right?</p> <p>3 A. Yes.</p> <p>4 Q. Okay.</p> <p>5 At no time since the report was signed</p> <p>6 by you back in May has Mr. Dondero or anyone</p> <p>7 acting on his behalf given you any documents that</p> <p>8 describe the terms or existence of any loan</p> <p>9 forgiveness agreement, correct?</p> <p>10 A. I had a conversation with Mr. Dondero</p> <p>11 about the loan forgiveness program at Next Bank,</p> <p>12 but I had that conversation with him.</p> <p>13 Q. But has anybody given you since</p> <p>14 May 28, 2021 any documents that reflect the terms</p> <p>15 or existence of the loan forgiveness program</p> <p>16 that's referred to in your expert report?</p> <p>17 A. No.</p> <p>18 Q. Did the Stinson firm give you</p> <p>19 Highland's audited financial statements for 2008,</p> <p>20 '9, '10, '11, '12, or '13?</p> <p>21 A. Now – now you're testing me, and I'm</p> <p>22 just not sure. They provided them to me, and I'm</p> <p>23 just not sure.</p> <p>24 Q. Okay.</p> <p>25 Are you aware that</p>
<p>Page 84</p> <p>1 ALAN JOHNSON</p> <p>2 PricewaterhouseCoopers was Highland's outside</p> <p>3 auditors?</p> <p>4 A. I remember seeing PwC, yes.</p> <p>5 Q. Are you aware that PwC gave a</p> <p>6 deposition in this case after the date you had</p> <p>7 authored your report?</p> <p>8 A. I was not aware of that.</p> <p>9 Q. So is it fair to say that you've never</p> <p>10 seen PricewaterhouseCoopers' deposition</p> <p>11 transcript?</p> <p>12 A. I have not.</p> <p>13 Q. And is it fair to say that you have no</p> <p>14 knowledge about what, if anything,</p> <p>15 PricewaterhouseCoopers testified to in this case?</p> <p>16 A. I do not know.</p> <p>17 Q. Have you ever heard of a Dugaboy</p> <p>18 Investment Trust?</p> <p>19 A. Dugaboy? I don't believe so.</p> <p>20 Q. So is it fair to say you have no</p> <p>21 knowledge as to whether or not the Dugaboy</p> <p>22 Investment Trust testified in this case?</p> <p>23 A. I have no knowledge.</p> <p>24 Q. So it's fair to say that you've never</p> <p>25 seen a deposition transcript relating to any</p>	<p>Page 85</p> <p>1 ALAN JOHNSON</p> <p>2 testimony given on behalf of the Dugaboy</p> <p>3 Investment Trust, correct?</p> <p>4 A. I have not.</p> <p>5 Q. Have you ever heard of Frank</p> <p>6 Waterhouse?</p> <p>7 A. I don't believe so.</p> <p>8 Q. I'll try and refresh your</p> <p>9 recollection.</p> <p>10 Do you know whether Mr. Waterhouse</p> <p>11 served as Highland Capital Management, L.P.'s</p> <p>12 chief financial officer for the five-plus years</p> <p>13 prior to the petition date?</p> <p>14 A. Now I think you've refreshed my</p> <p>15 memory. I think I've seen the name, yes.</p> <p>16 Q. Do you know if – have you ever seen a</p> <p>17 deposition transcript of any testimony</p> <p>18 Mr. Waterhouse has given in this case?</p> <p>19 A. I have not.</p> <p>20 Q. Do you know whether Mr. Dondero has</p> <p>21 testified in this case?</p> <p>22 A. I – I've seen some deposition</p> <p>23 testimony for Mr. Dondero.</p> <p>24 Q. And when did you see the deposition</p> <p>25 testimony?</p>

<p>Page 86</p> <p>1 ALAN JOHNSON</p> <p>2 A. Within the last week.</p> <p>3 Q. Do you know if he testified – do you</p> <p>4 know when the deposition was?</p> <p>5 A. I don't recall.</p> <p>6 Q. Do you recall – did you actually see</p> <p>7 a transcript?</p> <p>8 A. I saw the transcript, yes.</p> <p>9 Q. Did you see one transcript or more</p> <p>10 than one transcript?</p> <p>11 A. Just one.</p> <p>12 Q. And do you know if that deposition</p> <p>13 took place in May or did that deposition take</p> <p>14 place more recently?</p> <p>15 A. I – I don't know.</p> <p>16 Q. Were you given – were you provided a</p> <p>17 copy of the entire transcript?</p> <p>18 A. I received an excerpt – I'm not sure.</p> <p>19 I focused on an excerpt, but I'm not sure if I</p> <p>20 received the whole transcript.</p> <p>21 Q. And were you directed to that</p> <p>22 particular excerpt that you looked at?</p> <p>23 A. Yes.</p> <p>24 Q. And who directed you to that excerpt?</p> <p>25 A. The Stinson law firm.</p>	<p>Page 87</p> <p>1 ALAN JOHNSON</p> <p>2 Q. And did the Stinson law firm direct</p> <p>3 you to any portion of the transcript other than</p> <p>4 that excerpt?</p> <p>5 A. No.</p> <p>6 Q. And how – how long was the excerpt?</p> <p>7 Was it a few lines or a few pages or –</p> <p>8 A. A few pages.</p> <p>9 Q. Okay.</p> <p>10 And can you recall generally what the</p> <p>11 excerpt was that was provided to you by the</p> <p>12 Stinson law firm?</p> <p>13 A. It revolved around the loans.</p> <p>14 Q. And do you remember the substance of</p> <p>15 the excerpt, like what about the loans were you</p> <p>16 being directed to review?</p> <p>17 A. It was Mr. Dondero's testimony around</p> <p>18 the constructing of these forgivable loans. It</p> <p>19 was – that was – that was the – those were the</p> <p>20 pages.</p> <p>21 Q. Do you recall the page numbers</p> <p>22 perhaps?</p> <p>23 A. Actually, I do. One was 143.</p> <p>24 Q. Okay. Any others?</p> <p>25 A. I read before that and after that, but</p>
<p>Page 88</p> <p>1 ALAN JOHNSON</p> <p>2 I think that was – that was – for some reason, I</p> <p>3 recall that number.</p> <p>4 Q. Have you received – withdrawn.</p> <p>5 Other than the loan documents and</p> <p>6 financial statements you've described as well as</p> <p>7 the excerpt from Mr. Dondero's deposition, have</p> <p>8 you received any information concerning</p> <p>9 Mr. Dondero's compensation that was produced by</p> <p>10 Highland after May 28, 2021?</p> <p>11 A. I recall there was a – an excel file</p> <p>12 that had some additional things on compensation.</p> <p>13 Yeah, I think there was an excel file that broke</p> <p>14 out, you know, different elements of compensation.</p> <p>15 Q. When did you receive that?</p> <p>16 A. Sometime in October.</p> <p>17 Q. Did you receive anything in October</p> <p>18 other than the Excel file that you've just</p> <p>19 described and the loan documents and financial</p> <p>20 statements and excerpt from Mr. Dondero's</p> <p>21 transcript?</p> <p>22 A. Not that I recall.</p> <p>23 Q. Do you recall anything about the Excel</p> <p>24 file?</p> <p>25 A. It had different elements of pay. It</p>	<p>Page 89</p> <p>1 ALAN JOHNSON</p> <p>2 had some of the different legal entities.</p> <p>3 I think that – I think that's all I</p> <p>4 remember.</p> <p>5 Q. Did that Excel file cause you to</p> <p>6 change in any way any of the opinions that are set</p> <p>7 forth in your report?</p> <p>8 A. No.</p> <p>9 Q. Did Mr. Dondero's deposition</p> <p>10 transcript excerpt cause to you change, modify, or</p> <p>11 amend in any way any of the opinions set forth in</p> <p>12 your report?</p> <p>13 A. No.</p> <p>14 Q. Other than the Excel file, did you</p> <p>15 receive any other documents that Highland has</p> <p>16 produced in this matter since the date you</p> <p>17 executed your expert report on May 28, 2021?</p> <p>18 A. No.</p> <p>19 MR. MORRIS: If we can go to page 5 of</p> <p>20 the report, we still have it up on the</p> <p>21 screen here.</p> <p>22 Q. Do you see where it says, "Facts and</p> <p>23 Data Considered"?</p> <p>24 A. Yes.</p> <p>25 Q. Okay.</p>

<p>Page 90</p> <p>1 ALAN JOHNSON</p> <p>2 In the first sentence, you wrote, "in</p> <p>3 preparing this report, I've considered certain</p> <p>4 documents provided to me, interviews with</p> <p>5 Mr. Dondero, and former Highland or affiliate</p> <p>6 employees."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. When did you interview Mr. Dondero?</p> <p>10 A. Probably early May, early May of this</p> <p>11 year.</p> <p>12 Q. Is that the only time you've</p> <p>13 communicated with him directly concerning this</p> <p>14 case?</p> <p>15 A. I think I mentioned earlier I talked</p> <p>16 to him about the Next Bank – in the last week</p> <p>17 about the Next Bank loans, and then I talked to</p> <p>18 him prior to this report.</p> <p>19 I think those are the only times.</p> <p>20 Q. And did you speak with him on the</p> <p>21 phone? Did you meet with him in person or some</p> <p>22 other form of communication?</p> <p>23 A. Didn't – it was not in person. It</p> <p>24 was either a phone call or Zoom. I don't recall.</p> <p>25 Q. Do you recall how many phone calls or</p>	<p>Page 91</p> <p>1 ALAN JOHNSON</p> <p>2 Zoom calls you had with Mr. Dondero for the</p> <p>3 purpose of interviewing him, as stated in the</p> <p>4 first sentence of the Facts and Data Considered?</p> <p>5 A. Prior to this report, I think I talked</p> <p>6 to him three times, I believe.</p> <p>7 Q. And was anybody – did anybody</p> <p>8 participate in those Zoom or telephone calls</p> <p>9 besides you and Mr. Dondero?</p> <p>10 A. There would have been someone from the</p> <p>11 Stinson law firm and likely my colleague,</p> <p>12 Mr. Perniciaro, would have been on the call as</p> <p>13 well.</p> <p>14 Q. Do you know approximately what the</p> <p>15 total time you spent speaking with Mr. Dondero was</p> <p>16 before you prepared this report?</p> <p>17 Was it an hour or three hours?</p> <p>18 A. Probably an hour and a half.</p> <p>19 Q. So about 90 minutes.</p> <p>20 Do you recall – did you ask to</p> <p>21 interview him or did the Stinson firm suggest that</p> <p>22 you should speak with him?</p> <p>23 A. I suggested talking to him.</p> <p>24 Q. Okay.</p> <p>25 Do you recall what he told you during</p>
<p>Page 92</p> <p>1 ALAN JOHNSON</p> <p>2 this interview?</p> <p>3 A. We talked about his duties,</p> <p>4 responsibilities, went into what he – what he was</p> <p>5 involved in going back in time to the current, his</p> <p>6 duties, how he ran the firm. So we spent a fair</p> <p>7 amount of time talking about that.</p> <p>8 Talked about the different – these</p> <p>9 loans and the purpose of the loans, his philosophy</p> <p>10 around the loans.</p> <p>11 I think those were the two broad –</p> <p>12 the two broad categories.</p> <p>13 Q. Did he describe for you in any way the</p> <p>14 agreement that was entered into in late 2018,</p> <p>15 early 2019 relating to the forgiveness of the</p> <p>16 loans?</p> <p>17 A. Yes. Yes, he did.</p> <p>18 Q. What did he tell you about that?</p> <p>19 A. He said that the – the structure to</p> <p>20 reward him for a successful transaction with one</p> <p>21 of these three portfolio investments, that was the</p> <p>22 purpose, that loans had been used in the company</p> <p>23 in the past, that the loans were – had always</p> <p>24 intended to be forgiven, and this was simply</p> <p>25 codifying and structured the intent of the loans</p>	<p>Page 93</p> <p>1 ALAN JOHNSON</p> <p>2 all along.</p> <p>3 Q. Did he identify who the decision maker</p> <p>4 was who acted on behalf of the company?</p> <p>5 A. He – I don't believe that came up. I</p> <p>6 don't recall hearing that.</p> <p>7 Q. Did you ask him any questions that</p> <p>8 you – your gut told you he wasn't able to answer</p> <p>9 completely?</p> <p>10 A. No. I thought he was candid. I</p> <p>11 thought he was straightforward. I didn't – the</p> <p>12 questioning that I had with him, I didn't find –</p> <p>13 he answered the questions I had about both his</p> <p>14 role and the – how these loans were intended to</p> <p>15 operate.</p> <p>16 Q. Did he tell you that under the</p> <p>17 agreement he entered into with the decision maker,</p> <p>18 the loans would be forgiven if the assets were</p> <p>19 sold not by him but by a third party?</p> <p>20 A. I don't – I don't recall that, no.</p> <p>21 Q. It doesn't say that in your report,</p> <p>22 does it?</p> <p>23 A. It does not.</p> <p>24 Q. And you don't recall him specifically</p> <p>25 telling you that one of the terms of the agreement</p>



<p>Page 94</p> <p>1 ALAN JOHNSON</p> <p>2 was that all of the loans subject to the agreement</p> <p>3 would be forgiven if any of the three assets were</p> <p>4 sold by a third party. Is that fair?</p> <p>5 A. We didn't get into that, no.</p> <p>6 Q. And he didn't tell you that, correct?</p> <p>7 A. No.</p> <p>8 Q. Do your opinions rely on anything that</p> <p>9 Mr. Dondero told you?</p> <p>10 A. Certainly, the – his role was in –</p> <p>11 my opinion on what his role was, which formed the</p> <p>12 compensation thing, is influenced by what he said</p> <p>13 about this role. So yes, it impacted that, you</p> <p>14 know, part of the report.</p> <p>15 Q. Okay.</p> <p>16 So other than his role and his duties</p> <p>17 and responsibilities, is there anything else that</p> <p>18 Mr. Dondero told you during the interview that you</p> <p>19 have relied upon in formulating your opinions?</p> <p>20 A. I don't believe so.</p> <p>21 Q. How many former Highland or affiliate</p> <p>22 employees did you interview?</p> <p>23 A. I interviewed four.</p> <p>24 Q. Do you recall the names of any of</p> <p>25 them?</p>	<p>Page 95</p> <p>1 ALAN JOHNSON</p> <p>2 A. Adkins, Hurley, Lawlor, and Cote.</p> <p>3 Q. When did you interview those</p> <p>4 individuals?</p> <p>5 A. Probably early May of this year.</p> <p>6 Q. Do you have any notes from those</p> <p>7 interviews?</p> <p>8 A. I do not.</p> <p>9 Q. Do you know if your colleague has any</p> <p>10 notes from those interviews?</p> <p>11 A. I don't think so.</p> <p>12 Q. Do you know if there's any written</p> <p>13 record at all of the interviews you conducted with</p> <p>14 those former Highland or affiliate employees?</p> <p>15 A. I don't believe so.</p> <p>16 Q. Did you speak to them all at one time</p> <p>17 or did you speak to them individually?</p> <p>18 A. Individually over a few days.</p> <p>19 Q. Let's take them one at a time.</p> <p>20 Mr. Adkins, do you recall the</p> <p>21 substance of what Mr. Adkins told you?</p> <p>22 A. The substance of the four interviews</p> <p>23 were very similar. They described his role. They</p> <p>24 described their experiences with loans. So the –</p> <p>25 the comments from the four were very similar.</p>
<p>Page 96</p> <p>1 ALAN JOHNSON</p> <p>2 Q. So I apologize, I wasn't writing fast</p> <p>3 enough.</p> <p>4 A. I'm sorry –</p> <p>5 Q. I have Adkins –</p> <p>6 A. – I apologize.</p> <p>7 Q. I have Mr. Adkins, Mr. Lawlor, and who</p> <p>8 were the other two?</p> <p>9 A. Mr. Hurley and Mr. Cote.</p> <p>10 I believe those are the names.</p> <p>11 Q. Did any of them tell you – withdrawn.</p> <p>12 Did all of them tell you that they had</p> <p>13 obtained loans from Highland which were</p> <p>14 subsequently forgiven in whole or in part?</p> <p>15 A. I believe so.</p> <p>16 Q. Did any of them tell you how much</p> <p>17 money was forgiven?</p> <p>18 A. We talked about that, yes. They</p> <p>19 described the amounts.</p> <p>20 Q. Okay.</p> <p>21 What amounts do you recall being</p> <p>22 described as having been forgiven by Highland?</p> <p>23 A. It was in the hundreds of thousands.</p> <p>24 Q. Did any of them tell you that they had</p> <p>25 ever had a loan from Highland that was forgiven in</p>	<p>Page 97</p> <p>1 ALAN JOHNSON</p> <p>2 an amount equal to or more than \$500,000?</p> <p>3 A. They were a little sketchy on the</p> <p>4 exact amounts, but my impression, they ranged</p> <p>5 from, say, a quarter million to maybe \$500,000 or</p> <p>6 a little more. That – that was their</p> <p>7 recollections.</p> <p>8 Q. Did – did you learn from these four</p> <p>9 interviews when the last of these loans was</p> <p>10 forgiven?</p> <p>11 A. Probably 8 or 10 years ago.</p> <p>12 Q. Did anybody – withdrawn.</p> <p>13 Did any of the four of them inform you</p> <p>14 that Highland had forgiven any loans to any</p> <p>15 officer or employee in the last 8 to 10 years?</p> <p>16 A. I don't recall them saying that, no.</p> <p>17 Q. Did you – do you recall asking them</p> <p>18 when was the last loan that Highland ever forgave?</p> <p>19 A. I don't believe I asked that question.</p> <p>20 Q. And as you sit here right now, you</p> <p>21 have no knowledge as to when the last loan that</p> <p>22 Highland gave that was forgiven in whole or in</p> <p>23 part, correct?</p> <p>24 A. I don't have that knowledge, no.</p> <p>25 Q. Other than the loans that were</p>

<p>Page 98</p> <p>1 ALAN JOHNSON</p> <p>2 described for you by these four individuals, can</p> <p>3 you identify any other loan that Highland has ever</p> <p>4 forgiven?</p> <p>5 A. I don't have any other knowledge, no.</p> <p>6 Q. Did any of these four individuals give</p> <p>7 you any documents relating to any aspect of your</p> <p>8 report?</p> <p>9 A. No.</p> <p>10 Q. Did any of them give you any documents</p> <p>11 that would substantiate the information that they</p> <p>12 provided to you during the interview?</p> <p>13 A. They didn't provide any documents, no.</p> <p>14 Q. Did you ask them if they had any</p> <p>15 documents to substantiate what you were told?</p> <p>16 A. Yes. Yes, I did.</p> <p>17 Q. And they told you that they didn't</p> <p>18 have any.</p> <p>19 Do I have that right?</p> <p>20 A. Yes, that's right.</p> <p>21 Q. I think you testified that you do not</p> <p>22 know who the decision maker was who entered into</p> <p>23 the agreement with Mr. Dondero in late 2018 or</p> <p>24 early 2019 with respect to the forgiveness of the</p> <p>25 loans.</p>	<p>Page 99</p> <p>1 ALAN JOHNSON</p> <p>2 Do I have that right?</p> <p>3 A. When I interviewed Mr. Dondero, I did</p> <p>4 not – that didn't come up.</p> <p>5 Q. So I'm going to represent to you that</p> <p>6 it's in the pleading that Mr. Dondero entered into</p> <p>7 the agreement with his sister Nancy, who was the</p> <p>8 trustee of the Dugaboy Investment Trust who</p> <p>9 purportedly holds a majority of Highland's</p> <p>10 interests.</p> <p>11 Is that new information for you?</p> <p>12 A. Yes, it is.</p> <p>13 Q. Have you ever heard of Nancy Dondero</p> <p>14 before?</p> <p>15 A. I had heard her name just because</p> <p>16 there's attorneys representing her. That's all</p> <p>17 I – that's all I know.</p> <p>18 Q. You weren't aware until I just told</p> <p>19 you that she's the person who entered into the</p> <p>20 agreement with Mr. Dondero concerning --</p> <p>21 withdrawn.</p> <p>22 You didn't know until I just told you</p> <p>23 that Nancy Dondero, as the trustee for the Dugaboy</p> <p>24 Investment Trust, as the holder of a majority of</p> <p>25 interests of Highland, is the person who entered</p>
<p>Page 100</p> <p>1 ALAN JOHNSON</p> <p>2 into the agreement with Mr. Dondero?</p> <p>3 A. If your assertion is true, then I –</p> <p>4 then I – I did not know that.</p> <p>5 Q. Okay.</p> <p>6 And is it fair to say then that you</p> <p>7 don't know that she was deposed in this case?</p> <p>8 A. I don't believe I knew that, no.</p> <p>9 Q. And is it fair to say that you've</p> <p>10 never seen her deposition transcript, if one</p> <p>11 exists?</p> <p>12 A. I have not seen it.</p> <p>13 Q. Did you ever ask to speak with the</p> <p>14 decision maker?</p> <p>15 A. No, I did not.</p> <p>16 Q. And is that because – why – why</p> <p>17 didn't you ask to speak with the decision maker?</p> <p>18 A. My assignment here was to talk about</p> <p>19 practice, you know, in the industry of using loans</p> <p>20 and other things. It was not to – I was not</p> <p>21 asked to assess these particular loans.</p> <p>22 So if the assignment had been to – to</p> <p>23 assess the reasonableness or fairness, then I</p> <p>24 certainly would have done other things, but that</p> <p>25 was not the assignment here.</p>	<p>Page 101</p> <p>1 ALAN JOHNSON</p> <p>2 Q. Okay.</p> <p>3 And can you – can you be as specific</p> <p>4 as you can as to what the assignment was?</p> <p>5 A. Well, in addition to coming up with a</p> <p>6 market compensation, in the report, I said the</p> <p>7 assignment was to talk about the practice and –</p> <p>8 of using loans and forgivable loans and, you know,</p> <p>9 financial services firms, but it was not to assess</p> <p>10 the reasonableness of – the specific</p> <p>11 reasonableness of this particular transaction.</p> <p>12 Q. Okay.</p> <p>13 And you're not offering any opinion as</p> <p>14 to the reasonableness of the agreement that</p> <p>15 Mr. Dondero entered into with the Dugaboy</p> <p>16 Investment Trust concerning the forgiveness of any</p> <p>17 loans. Is that fair?</p> <p>18 A. I'm not – I'm not putting that forth,</p> <p>19 no.</p> <p>20 Q. And you're not offering any opinions</p> <p>21 as to whether or not such an agreement exists,</p> <p>22 correct?</p> <p>23 A. No, I am not.</p> <p>24 Q. You're not offering any opinions as to</p> <p>25 whether or not it would have been appropriate for</p>

<p>Page 102</p> <p>1 ALAN JOHNSON</p> <p>2 the company to enter into a loan forgiveness</p> <p>3 program under the facts and circumstances that</p> <p>4 existed at the time, correct?</p> <p>5 A. That's right.</p> <p>6 Q. And you're not offering any opinion</p> <p>7 that the loan forgiveness program that Mr. Dondero</p> <p>8 entered into is consistent with industry</p> <p>9 standards, are you?</p> <p>10 A. No, I'm not.</p> <p>11 Q. Okay.</p> <p>12 What you are doing is you're -- you're</p> <p>13 making an assessment of what comparable executives</p> <p>14 earn in the industry. Is that fair?</p> <p>15 A. That's part of it, and then the</p> <p>16 second, as I mentioned, just the use of such loans</p> <p>17 within the industry and, you know, within</p> <p>18 Highland.</p> <p>19 Q. Okay.</p> <p>20 But you're not offering any opinion as</p> <p>21 to whether or not -- withdrawn.</p> <p>22 We'll keep going.</p> <p>23 You have no information about what</p> <p>24 diligence, if any, the decision maker conducted</p> <p>25 prior to entering into the agreement with</p>	<p>Page 103</p> <p>1 ALAN JOHNSON</p> <p>2 Mr. Dondero in late 2018 or early 2019, correct?</p> <p>3 A. I do not.</p> <p>4 Q. And you're not offering any opinion as</p> <p>5 to whether or not the diligence that was done by</p> <p>6 that person was sufficient, correct?</p> <p>7 A. I'm not making that opinion, no.</p> <p>8 Q. And you don't have any information</p> <p>9 about the skill set or the experience of the</p> <p>10 decision maker, fair?</p> <p>11 A. I do not.</p> <p>12 Q. And you're not offering any opinion as</p> <p>13 to the skill set or the experience of the decision</p> <p>14 maker who entered into this alleged agreement on</p> <p>15 behalf of Highland, correct?</p> <p>16 A. I am not.</p> <p>17 MR. MORRIS: Let's go to page 3 of</p> <p>18 your report, please.</p> <p>19 So this is the introduction, right?</p> <p>20 So this is the very first substantive page</p> <p>21 of the report, is that right?</p> <p>22 A. Yes.</p> <p>23 Q. Okay.</p> <p>24 If you take a look near the end of the</p> <p>25 first paragraph, there's a sentence that reads,</p>
<p>Page 104</p> <p>1 ALAN JOHNSON</p> <p>2 "Throughout this period, he received loans in lieu</p> <p>3 of additional current compensation."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Have I read that correctly?</p> <p>7 A. Yes.</p> <p>8 Q. Why did you include that sentence in</p> <p>9 your report?</p> <p>10 A. I -- Mr. Dondero described these loans</p> <p>11 as -- as a practice of, in lieu of paying</p> <p>12 compensation, these loans were -- these loans were</p> <p>13 made.</p> <p>14 Q. What information were you given that</p> <p>15 you relied upon in order to make the statement</p> <p>16 that I just read into the record?</p> <p>17 A. Well, I interviewed Mr. Dondero, and</p> <p>18 then I talked to the four prior Highland</p> <p>19 executives.</p> <p>20 Q. Now, you told me that the four prior</p> <p>21 Highland executives described for you certain</p> <p>22 loans that they had received that had been</p> <p>23 forgiven in whole or in part by Highland.</p> <p>24 Do I have that right?</p> <p>25 A. Yes.</p>	<p>Page 105</p> <p>1 ALAN JOHNSON</p> <p>2 Q. Did any of them give you any</p> <p>3 information to support the statement that</p> <p>4 throughout this period Mr. Dondero received loans</p> <p>5 in lieu of additional current compensation or is</p> <p>6 that information that came exclusively from</p> <p>7 Mr. Dondero?</p> <p>8 A. They described a practice at the</p> <p>9 company of using these loans as a -- a form of</p> <p>10 deferred pay, so they described it -- it was not</p> <p>11 only them, but it applied to others, and then when</p> <p>12 I interviewed Mr. Dondero, his testimony -- his</p> <p>13 comments to me were consistent with that.</p> <p>14 Q. Okay.</p> <p>15 Did any of the four former employees</p> <p>16 specifically tell you that Mr. Dondero had ever</p> <p>17 received loans in lieu of additional current</p> <p>18 compensation or did they just describe a general</p> <p>19 practice that applied to others?</p> <p>20 A. I think they were describing the</p> <p>21 general practice.</p> <p>22 Q. Okay.</p> <p>23 So did anybody other than Mr. Dondero</p> <p>24 tell you that "Throughout this period, he received</p> <p>25 loans in lieu of additional current compensation"?</p>